



Proceedings

A monthly newsletter from McGraw-Hill Education



August 2020 Volume 12, Issue 1

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Dear Professor,

Welcome to McGraw-Hill Education's August 2020 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 12, Issue 1 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the August 2020 newsletter topics with the various McGraw-Hill Education business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. A landmark ruling by the United States Supreme Court ruling regarding L.G.B.T. equality;
2. The University of California's decision to restore affirmative action in its university admissions process;
3. Taco Bell's decision to allow its employees to wear "Black Lives Matter" masks in support of the movement;
4. Videos related to a) a recent ruling by the United States Supreme Court to block President Donald Trump's decision to end the Deferred Action for Childhood Arrivals (DACA) program; and b) a recent decision by the Equal Employment Opportunity Commission (EEOC) that employers cannot require their employees to take COVID-19 antibody tests;
5. An "ethical dilemma" related to actions of Adidas employees from around the globe to encourage the company to address alleged racial inequality within its ranks; and
6. "Teaching tips" related to Video 1 ("Supreme Court Blocks Trump from Ending DACA") of the newsletter.

As educators, all of us are aware of the academic challenges we face due to the coronavirus pandemic. I encourage all of you to rise to the occasion. I wish all of you a prosperous and enjoyable year, and I hope that you and those you love remain safe and healthy.

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Of Special Interest

This section of the newsletter covers three (3) topics:

- 1) A landmark ruling by the United States Supreme Court ruling regarding L.G.B.T. equality;
- 2) The University of California's decision to restore affirmative action in its university admissions process; and
- 3) Taco Bell's decision to allow its employees to wear "Black Lives Matter" masks in support of the movement.

Hot Topics in Business Law

Article 1: "Civil Rights Law Protects Gay and Transgender Workers, Supreme Court Rules"

<https://www.nytimes.com/2020/06/15/us/gay-transgender-workers-supreme-court.html>

According to the article, the United States Supreme Court ruled recently that a landmark civil rights law protects gay and transgender workers from workplace discrimination, handing the movement for L.G.B.T. equality a long-sought and unexpected victory.

"An employer who fires an individual merely for being gay or transgender defies the law," Justice Neil M. Gorsuch wrote for the majority in the 6-to-3 ruling.

That opinion and two dissents, spanning 168 pages, touched on a host of flash points in the culture wars involving the L.G.B.T. community — bathrooms, locker rooms, sports, pronouns and religious objections to same-sex marriage. The decision, the first major case on transgender rights, came amid widespread demonstrations, some protesting violence aimed at transgender people of color.

Until this decision, it was legal in more than half of the states to fire workers for being gay, bisexual or transgender. The vastly consequential decision thus extended workplace protections to millions of people across the nation, continuing a series of Supreme Court victories for gay rights even after President Trump transformed the court with his two appointments.

The decision achieved a decades-long goal of gay rights proponents, one they had initially considered much easier to achieve than a constitutional right to same-sex marriage. But even as the Supreme Court established that right in 2015, workplace discrimination remained lawful in most of the country. An employee who married a same-sex partner in the morning could be fired that afternoon for being gay.

The lopsided ruling, coming from a fundamentally conservative court, was a surprise. Justice Gorsuch, who was Mr. Trump's first appointment to the



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court, was joined by Chief Justice John G. Roberts Jr. and Justices Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor and Elena Kagan.

Supporters of L.G.B.T. rights were elated by the ruling, which they said was long overdue.

“This is a simple and profound victory for L.G.B.T. civil rights,” said Suzanne B. Goldberg, a law professor at Columbia. “Many of us feared that the court was poised to gut sex discrimination protections and allow employers to discriminate based on sexual orientation and gender identity, yet it declined the federal government’s invitation to take that damaging path.”

In remarks to reporters, Mr. Trump said he accepted the ruling. “I’ve read the decision,” he said, “and some people were surprised, but they’ve ruled and we live with their decision.” He added that it was a “very powerful decision, actually.”

The Trump administration had urged the court to rule against gay and transgender workers, and it has barred most transgender people from serving in the military. The Department of Health and Human Services issued a regulation recently that undid protections for transgender patients against discrimination by doctors, hospitals and health insurance companies.

Those actions involved different laws from the one at issue in the subject case, and the Supreme Court has allowed the military ban to go into effect while lawsuits challenging it proceed. Still, the court’s ruling suggested that a new era in transgender rights has arrived.

The decision, covering two sets of cases, was the court’s first on lesbian, gay, bisexual and transgender rights since the retirement in 2018 of Justice Anthony M. Kennedy, who wrote the majority opinions in all four of the court’s major gay rights decisions. Proponents of those rights had worried that his departure would halt the progress of the movement toward equality.

The Supreme Court is generally not very far out of step with popular opinion, and large majorities of Americans oppose employment discrimination based on sexual orientation, and substantial ones oppose it when based on gender identity. More than 200 major corporations filed a brief supporting the gay and transgender employees in the cases before the court.

The decision was both symbolic and consequential, and it followed in the tradition of landmark rulings on discrimination. Unlike *Brown v. Board of Education*, the 1954 decision that said racially segregated public schools violated the Constitution; *Loving v. Virginia*, the 1967 decision that struck down bans on interracial marriage; and *Obergefell v. Hodges*, the 2015 decision that struck down state bans on same-sex marriage, the new decision did not involve constitutional rights.

Instead, the question for the justices was the meaning of a statute, Title VII of the Civil Rights Act of 1964, which bars employment discrimination based on race, religion, national origin and sex. They had to decide whether that last prohibition — discrimination “because of sex” — applies to many millions of gay and transgender workers.



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Justice Gorsuch wrote that it did.

“An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex,” he wrote.

“It is impossible,” Justice Gorsuch wrote, “to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”

The decision will allow people who say they were discriminated against in the workplace based on their sexual orientation or gender identity to file lawsuits, just as people claiming race and sex discrimination may. The plaintiffs will have to offer evidence, of course, and employers may respond that they had reasons unrelated to discrimination for their decisions.

Justice Samuel A. Alito Jr., in a dissent joined by Justice Clarence Thomas, wrote that the majority had abandoned its judicial role.

“There is only one word for what the court has done today: legislation,” Justice Alito wrote. “The document that the court releases is in the form of a judicial opinion interpreting a statute, but that is deceptive.”

“A more brazen abuse of our authority to interpret statutes is hard to recall,” he wrote. “The court tries to convince readers that it is merely enforcing the terms of the statute, but that is preposterous.”

The common understanding of sex discrimination in 1964, Justice Alito wrote, was bias against women or men and did not encompass discrimination based on sexual orientation and gender identity. If Congress wanted to protect gay and transgender workers, he wrote, it could pass a new law.

“Discrimination ‘because of sex’ was not understood as having anything to do with discrimination because of sexual orientation or transgender status” in 1964, he wrote. “Any such notion would have clashed in spectacular fashion with the societal norms of the day.”

Justice Alito added that the majority’s decision would have pernicious consequences.

He said the majority left open, for instance, questions about access to restrooms and locker rooms. “For women who have been victimized by sexual assault or abuse,” he wrote, “the experience of seeing an unclothed person with the anatomy of a male in a confined and sensitive location such as a bathroom or locker room can cause serious psychological harm.”

Nor did the majority address, he said, how its ruling would affect sports, college housing, religious employers, health care or free speech.



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“After today’s decision,” Justice Alito wrote, “plaintiffs may claim that the failure to use their preferred pronoun violates one of the federal laws prohibiting sex discrimination.”

“Although the court does not want to think about the consequences of its decision, we will not be able to avoid those issues for long,” he wrote. “The entire federal judiciary will be mired for years in disputes about the reach of the court’s reasoning.”

Justice Gorsuch responded that the court’s ruling was narrow. “We do not purport to address bathrooms, locker rooms or anything else of the kind,” he wrote. “Whether other policies and practices might or might not qualify as unlawful discrimination or find justifications under other provisions of Title VII are questions for future cases, not these.”

He added that Title VII itself included protections for religious employers and that a separate federal law and the First Amendment also allow religious groups latitude in their employment decisions.

Justice Brett M. Kavanaugh, Mr. Trump’s other appointment to the court, issued a separate dissent making a point about statutory interpretation. “Courts must follow ordinary meaning, not literal meaning,” he wrote, adding that the ordinary meaning of “because of sex” does not cover discrimination based on sexual orientation or gender identity.

“Seneca Falls was not Stonewall,” he wrote. “The women’s rights movement was not (and is not) the gay rights movement, although many people obviously support or participate in both. So to think that sexual orientation discrimination is just a form of sex discrimination is not just a mistake of language and psychology, but also a mistake of history and sociology.”

The court considered two sets of cases. The first concerned a pair of lawsuits from gay men who said they were fired because of their sexual orientation: *Bostock v. Clayton County, Ga.*, No. 17-1618, and *Altitude Express Inc. v. Zarda*, No. 17-1623.

The first case was filed by Gerald Bostock, who was fired from a government program that helped neglected and abused children in Clayton County, Ga., just south of Atlanta, after he joined a gay softball league.

The second was brought by a skydiving instructor, Donald Zarda, who also said he was fired because he was gay. His dismissal followed a complaint from a female customer who had expressed concerns about being strapped to Mr. Zarda during a tandem dive. Mr. Zarda, hoping to reassure the customer, told her that he was “100 percent gay.”

The case on gender identity, *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*, No. 18-107, was brought by a transgender woman, Aimee Stephens, who was fired from a Michigan funeral home after she announced in 2013 that she was a transgender woman and would start working in women’s clothing.



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Mr. Zarda died in an accident in 2014, and Ms. Stephens died on May 12. Their estates continued to pursue their cases after their deaths.

Critics sometimes say that the Congress does not hide elephants in mouse holes, Justice Gorsuch wrote, meaning that lawmakers do not take enormous steps with vague terms or in asides.

“We can’t deny that today’s holding — that employers are prohibited from firing employees on the basis of homosexuality or transgender status — is an elephant,” he wrote. “But where’s the mouse hole? Title VII’s prohibition of sex discrimination in employment is a major piece of federal civil rights legislation. It is written in starkly broad terms. It has repeatedly produced unexpected applications, at least in the view of those on the receiving end of them.”

“This elephant,” he wrote, “has never hidden in a mouse hole; it has been standing before us all along.”

Discussion Questions

1. What was the reasoning behind the majority decision in this case?

According to the article, United States Supreme Court Justice Neil Gorsuch (who wrote the opinion for the majority) indicated that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” The Civil Rights Act of 1964 prohibits discrimination based on sex.

2. Discuss Justice Samuel Alito’s dissent in this case. What was the reasoning behind Justice Alito’s dissent?

According to Justice Alito, in reaching its decision that L.G.B.T. discrimination is sex discrimination, the majority is legislating from the bench, suggesting that it is actually making law rather than interpreting already-existing law.

3. Do you agree or disagree with the majority decision in this case? Explain your response.

This is an opinion question, so student responses may vary.

Article 2: “University of California Votes to Restore Affirmative Action Nearly 24 Years After It Was Outlawed”

<https://www.cnn.com/2020/06/16/us/university-of-california-restore-affirmative-action-trnd/index.html>

According to the article, the University of California has voted to restore affirmative action in hopes of diversifying its student body.



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The unanimous decision was reached by the school's Board of Regents recently, nearly twenty-four years after it was outlawed by Proposition 209, which banned the consideration of race and gender in admissions in California.

By voting, the university endorsed its repeal.

The board also voted in favor of an amendment which would repeal Proposition 209 and provisions prohibiting the state from granting favorable treatment to anyone on the basis of race, sex, color, ethnicity or nationality.

"There is amazing momentum for righting the wrongs caused by centuries of systemic racism in our country. The UC Board of Regents' votes to endorse ACA 5 and to repeal Proposition 209 plays a part in that effort," board chair John A. Pérez said in a statement.

"As we continue to explore all the University's opportunities for action, I am proud UC endorsed giving California voters the chance to erase a stain, support opportunity and equality, and repeal Proposition 209."

In a news release, the board said Proposition 209 challenged the university's efforts to create and maintain a student body that "reflects California's laudable cultural, racial, geographic and socioeconomic diversity."

The goal of affirmative action in US colleges and universities is to eliminate discrimination in the admissions process by recruiting and providing incentives for groups, like minority students and women, who have been historically excluded from leadership positions in American society.

Affirmative action refers to a set of policies and laws intended to combat that discrimination while promoting diversity in schools and workplaces. Supporters say it levels the playing field, promotes a healthy multicultural society and helps compensate for centuries of racial, social and economic oppression.

Detractors argue it's a form of reverse discrimination that favors one group over another based on racial or gender preferences instead of academic achievement.

California is one of eight states that have banned race-conscious admissions practices.

"It makes little sense to exclude any consideration of race in admissions when the aim of the University's holistic process is to fully understand and evaluate each applicant through multiple dimensions," UC President Janet Napolitano said in a statement.

"Proposition 209 has forced California public institutions to try to address racial inequality without factoring in race, even where allowed by federal law. The diversity of our university and higher



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education institutions across California, should -- and must -- represent the rich diversity of our state."

The state Assembly approved Assembly Constitutional Amendment 5 (ACA 5) on Wednesday 60-14. The legislation is now in the state Senate, where it must also pass with a two-thirds vote by June 25.

If ratified, ACA 5 will appear on November 3 general election ballot, where it would need a majority vote to pass.

In May, the University of California Board of Regents also unanimously voted to waive ACT and SAT tests as an admissions requirement until 2024 to align their admission policies with "the broad-based values of the university."

Discussion Questions

1. What is affirmative action?

Affirmative action is a program that seeks to cure past practices of discrimination by preferring (in close cases when comparing the educational attainment, skill set, experience, etc. of applicants) individuals from categories of people who have been historically subject to discrimination.

2. What is the argument in favor of affirmative action? What is the argument against it?

The argument in favor of affirmative action is that it fulfills the purposes of the Civil Rights Act of 1964 and other anti-discrimination laws by actively seeking to reduce or eliminate the effect of past practices of discrimination. The argument against it is that it constitutes reverse discrimination against individuals from categories of people who have not been historically subject to discrimination.

3. Do you agree or disagree with the University of California's decision to restore affirmative action in its university admissions? Explain your response.

This is an opinion question, so student responses may vary.

Article 3: "Taco Bell Says Employees Can Wear Black Lives Matter Masks After A Worker Was Fired for Wearing One"

<https://www.usatoday.com/story/money/food/2020/06/18/black-lives-matter-boycott-taco-bell-worker-fired-blm-masks/3213474001/>

According to the article, Taco Bell said recently that it does not prohibit its employees from wearing Black Lives Matter masks and was working closely with an Ohio franchise after a former employee said he was fired for wearing a mask supporting the movement.



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Denzel Skinner shared a live video on Facebook June 8 about getting fired from a location in Youngstown, Ohio, for refusing to take off a Black Lives Matter mask. The video started going viral Thursday.

“We believe Black Lives Matter. We were disappointed to learn about the incident that took place in Youngstown, OH,” Taco Bell said in a statement. “We take this very seriously; we have been working closely with our franchisee that operates this location to address the issue.”

Skinner said he worked for the restaurant for eight years.

“This is crazy – all because I got a Black Lives Matter mask on – that I’m losing my job,” Skinner said in the video. “We can wear any type of masks.”

In the video, an unidentified woman, possibly a manager, told Skinner the masks had to be plain and “You can’t bring politics into the building.”

Skinner responded that it wasn’t politics.

"Bro, I'm not bringing politics in, this is what I'm standing for," Skinner said. "Like how is this considered politics?"

The fast-food chain said in its statement that the company's chief people office and parent company Yum!’s chief diversity and inclusion officer spoke with Skinner last week to "apologize and discuss the situation."

"Our goal is to ensure our policies are inclusive and keep our team members and customers safe," Taco Bell's statement said. "While our policies at restaurants do not prohibit Team Members from wearing Black Lives Matter masks, we are working to clarify our mask policy, so this doesn't happen again."

Last week, Starbucks said it was allowing its baristas and other employees to wear Black Lives Matter T-shirts and pins, reversing its policy on the matter.

Discussion Questions

1. What does it mean to be a “diversity and inclusion” officer?

An organization’s “diversity and inclusion” officer is someone appointed to ensure that the organization complies with federal and state anti-discrimination law. A diversity and inclusion officer also seeks to ensure non-discrimination based on the belief that it is ethical to adopt and enforce such an approach and that such an approach in the best interests (both financially and non-financially) of the organization itself.



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2. Suppose that Taco Bell decided to respond differently to the issue; i.e., suppose the company decided to prohibit employees from wearing “Black Lives Matter” masks. Would that have been a violation of law? Why or why not?

Technically, Taco Bell could prohibit employees from wearing such masks, but it (and every other company) must adopt an equitable approach in choosing to take such an approach. For example, if a company were to prohibit “Black Lives Matter” masks but allow employees to wear “White Lives Matter” masks, such an act could possibly constitute either disparate treatment or disparate impact discrimination.

3. Do you agree with Taco Bell’s decision? Why or why not?

This is an opinion question, so student responses may vary.



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Video Suggestions

Video 1: "Supreme Court Blocks Trump from Ending DACA"

https://abcnews.go.com/Politics/supreme-court-makes-major-decision-daca/story?id=71254750&cid=clicksource_4380645_2_heads_hero_live_hero_related

Note: In addition to the video, please see the following article included at the above-referenced internet address:

"Supreme Court Blocks Trump from Ending DACA"

According to the article, the United States Supreme Court handed President Donald Trump a major defeat recently, blocking his 2017 decision to immediately end the Deferred Action for Childhood Arrivals program, or DACA.

The majority opinion, written by Chief Justice John Roberts, rejects Trump's rationale for canceling the program as "arbitrary and capricious" in violation of federal law.

Roberts said there's no question the president has the power to end DACA, but that the issue was with how he did it -- leaving the door open for the administration to make another attempt at cancelling the program.

"We do not decide whether DACA or its rescission are sound policies," Roberts wrote. "We address only whether the agency complied with the procedural requirement that it provide a reasoned explanation for its action. Here the agency failed."

By a 5-4 vote, Roberts joined the court's liberals in faulting the Department of Homeland Security for ignoring "conspicuous issues" of "hardship" that ending DACA would have on recipients, especially those serving in the U.S. military, undergoing medical treatments or studying in school.

"Today's decision is completely monumental," said Krissia Rivera, a 27-year-old DACA recipient and fourth-year medical school student at Brown University. "This decision means that I will be able to apply to residency programs and hopefully achieve my dream of becoming a surgeon"



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DACA began under President Barack Obama in 2012 and allows young people who were brought to the U.S. illegally as children to stay in the country and work without being deported on a two-year, renewable term. As of March 31, 2020, 640,000 people have active DACA status, and since 2012, more than 825,000 people have utilized the program.

In dissent, Justice Clarence Thomas said the court was making a huge mistake. "The Trump administration rescinded DACA the same way that the Obama administration created it," he wrote, "unilaterally and through a mere memorandum."

Thomas wrote that Congress, not the courts, should enact a solution for the so-called "Dreamers," named after the DREAM Act that would have provided similar protections but never passed Congress.

"DACA was always meant to be a temporary solution; lasting protection for 'Dreamers' really would require legislation," said ABC News Supreme Court contributor Kate Shaw. "The administration and the dissenting justices basically said this is something that the Trump administration had the power to do."

Congress has tried and failed more than a dozen times to enact protections for "Dreamers," despite strong public support for initiatives aimed at extending legal status to young immigrants.

President Donald Trump, who once said he had "great heart" for "Dreamers," blasted the Supreme Court for a "horrible and politically charged" opinion and vowing to try again at ending the program his predecessor created.

"Now we have to start this process all over again," Trump wrote on Twitter.

Legal and immigration experts said any effort to end the program now would be unlikely to take effect before the November election.

Chief Justice Roberts, a conservative who sometimes sides with the liberal justices in cases with major political consequences for the nation and the court, was joined in the opinion by Justices Ruth Bader Ginsburg, Stephen Breyer and Elena Kagan. Justice Sonia Sotomayor joined the majority in all but one part and filed an opinion as well.

Political conservatives lashed out at Roberts, who for the second time this week joined with the liberals on a major decision. "Chief Justice Roberts once again has failed to stand up for the institutional interests of the Court by allowing it to be weaponized for partisan ends," said Carrie Severino, president of the Judicial Crisis Network, a conservative advocacy group.

Republican Senator Ted Cruz attacked the court in a speech on the Senate floor, calling the decision "lawless." "It was gamesmanship. It was contrary to the judicial oath," he said.



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Justice Clarence Thomas' dissent was joined in part by Justices Samuel Alito and Neil Gorsuch. Additionally, Justice Brett Kavanaugh filed an opinion concurring and dissenting in part.

"We know that this is a temporary victory," said Greisa Martinez, a 30-year-old DACA recipient and deputy executive director of United We Dream, an advocacy group. "Everyone that can vote needs to vote this November to make sure that Donald Trump doesn't get to make the decision of taking DACA away again."

Presumptive Democratic presidential nominee Joe Biden in a statement pledged to "immediately work to make [protections for Dreamers] permanent by sending a bill to Congress on day one" if he wins the White House.

Senate Democratic Leader Chuck Schumer told DACA recipients celebrating outside the Supreme Court that he wants them to have citizenship. "This is just the beginning," Schumer said. "You are going to become American citizens and great American citizens at that."

Former President Barack Obama tweeted in support of the young immigrants. "Eight years ago this week, we protected young people who were raised as part of our American family from deportation. Today, I'm happy for them, their families, and all of us. We may look different and come from everywhere, but what makes us American are our shared ideals," Obama posted on Twitter.

Trump made cracking down on immigration and terminating DACA a central campaign issue when he ran for president starting in 2015. Over the course of his campaign, Trump specifically targeted Mexican people, infamously referring to Mexicans who come to the United States, saying, "They're bringing drugs. They're bringing crime. They're rapists."

Sotomayor quoted that line in her concurring opinion, in which she took issue with the majority opinion finding that Trump's decision to end DACA was not "motivated by animus."

"But the impact of the policy decision must be viewed in the context of the President's public statements on and off the campaign trail," Sotomayor argues. "At the motion-to-dismiss stage, I would not so readily dismiss the allegation that an executive decision disproportionately harms the same racial group that the President branded as less desirable mere months earlier."

Many DACA recipients said they are breathing a sigh of relief after a tense, years-long legal battle.

"I was quite relieved knowing that I won't receive an order for deportation in the mail anytime soon," said Eduardo Zarate, 20, a junior at Wyoming University in Jackson. "More importantly, I was very relieved knowing that I'm able to continue my education without worrying about deportation."

Luis Zuluaga, a 23-year-old DACA recipient from Colombia and recent college graduate, said the fight for "Dreamers" is once again a political one.



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"This country hasn't gone anywhere near solving its immigration problem. This is just another Band-Aid, which is nice for the moment but it's not enough," he said.

Discussion Questions

1. Describe the Deferred Action for Childhood Arrivals (DACA) program.

As indicated in Teaching Tip 1 ("What Is DACA? And How Did It End Up in the Supreme Court?") included later in this newsletter, the Deferred Action for Childhood Arrivals (DACA) program was introduced in 2012 by President Barack Obama as a stopgap measure to shield from deportation people who were brought into the United States as children and did not have citizenship or legal residency status. The protection lasts for two (2) years at a time and is renewable. The program does not provide a pathway to citizenship. Participation in the program comes with a range of benefits. Along with permission to remain in the country, recipients can also get work permits, and can obtain health insurance from employers who offer it.

2. As indicated in the article, United States Supreme Court Chief Justice John Roberts, who wrote the majority opinion in this case, concluded that President Trump's decision to end the DACA program was "arbitrary and capricious." What did Chief Justice Roberts mean by this?

By indicating that President Trump's decision to end the DACA program was "arbitrary and capricious," Chief Justice Roberts was opining that the decision was not based on substantive reasoning. In his opinion, Chief Justice Roberts did not state that President Trump did not have the authority to end the program; instead, he indicated that President Trump must provide a sound, justifiable and articulable reason as to why he was ending the program.

3. In your reasoned opinion, was the majority opinion in this case a correct one? Why or why not?

This is an opinion question, so student responses may vary.

Video 2: "Employers Can't Require COVID-19 Antibody Tests, EEOC Says"

https://abcnews.go.com/Business/employers-require-covid-19-antibody-tests-eeoc/story?id=71319374&cid=clicksource_4380645_7_heads_posts_card_hed

Note: In addition to the video, please see the following article also included at the above-referenced internet address:

"Employers Can't Require COVID-19 Antibody Tests, EEOC Says"

According to the article, the Equal Employment Opportunity Commission made it clear that employers cannot force workers to take COVID-19 antibody tests, as businesses begin grappling with how to safely reopen amid the pandemic.



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The federal group that enforces anti-discrimination laws said in a new post recently, however, that business leaders can require workers to take a viral test to determine whether they are actively infected.

The group also noted that employers can measure employees' body temperatures, a practice adopted amid the pandemic by companies such as Amazon.

"An antibody test constitutes a medical examination under the ADA," the commission wrote, referring to the Americans with Disability Act, noting that currently antibody tests do not meet the ADA's "job related and consistent with business necessity" standards for employee medical examinations.

The commission also cited the U.S. Centers for Disease Control and Prevention's Interim Guidelines, which state that antibody test results "should not be used to make decisions about returning to persons to the workplace."

"The EEOC will continue to closely monitor CDC's recommendations, and could update this discussion in response to changes in CDC's recommendations," the group said.

The news comes as a handful of states have rushed to reopen businesses, and health officials have seen a concerning rise in COVID-19 infections.

Discussion Questions

1. Describe the Equal Employment Opportunity Commission (EEOC).

The Equal Employment Opportunity Commission (EEOC) is a federal administrative agency charged with the responsibility of regulating and enforcing the nation's anti-discrimination laws.

2. In your reasoned opinion, what is the rationale behind the EEOC's decision that employers cannot force workers to take COVID-19 antibody tests?

This is an opinion question, so student responses may vary. In your author's opinion, the foundational basis for the EEOC's decision that employers cannot force workers to take COVID-19 antibody tests is that a person who has antibodies has already "beaten" the virus and is therefore not a risk to others (for example, coworkers). Since the employee is not a danger to others, his medical status is not discoverable by the employer.

3. If employers cannot force workers to take COVID-19 antibody tests, why can they require workers to take a viral test to determine whether they are actively infected? Why can employers measure employees' body temperatures?



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In either instance, the employer's action would be based on a good-faith attempt (and arguable legal obligation) to protect others who might encounter the employee in the work environment (for example, coworkers).



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Ethical Dilemma

Of Special Interest

This section of the newsletter addresses the actions of Adidas employees from around the globe to encourage the company to address alleged racial inequality within its ranks.

“Adidas Employees Want Company to Investigate HR Chief for Response to Racial Issues”

<https://www.cnn.com/2020/06/16/business/adidas-employee-letter-hr-chief/index.html>

According to the article, a group of Adidas employees from around the globe is asking the company to investigate its chief human resources officer, as part of a broader effort to push the company to take additional actions to address racial inequality within its ranks.

A letter sent to three Adidas executives on June 15 asks the company's supervisory board to examine whether Adidas HR chief Karen Parkin has appropriately responded to racial issues within the company. The letter was signed by 83 employees from five of the company's offices in Germany, the United States, Australia and Panama. The sportswear giant employs nearly 60,000 people worldwide.

The letter also calls for the creation of an anonymous platform where employees can report instances of racism and discrimination, and for protection against retaliation.

"Our employees have courageously raised their voices to people in positions of power; they have called out the fact that we are not representative of the communities we profit from and we lack the leadership, processes, and goals that will enable us to get there," the letter reads.

The letter also asks the company's Supervisory Board to "investigate whether we have the right approach and behavior from our (chief human resources officer) to tackle this issue within Adidas." It adds that employees believe it is "important that our approach to tackling these issues is modeled by our highest ranks of leadership, especially in HR where its purpose is the health and performance of the organization."

Adidas, which also owns Reebok, said in a statement that it "rejects all statements" made in the employee letter. The company said last week it has a zero tolerance policy for retaliation, and that it has established a third party investigator to ensure this policy is upheld.



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"Adidas and Reebok have always been and will always be against discrimination in all forms and we stand united against racism," the company said in a statement. "Our Black employees have led the response that we will continue to implement together and that we have committed to as a company. We are now concentrating our efforts on making progress and creating real change immediately."

Parkin is a longtime employee who has served as head of global human resources for more than three years, according to her LinkedIn profile.

She did not respond directly to a request for comment on this story. However, Adidas said Parkin is currently working with a coalition of employees on the company's global diversity and inclusion commitments.

"You have all seen our announcements over the past several days that outline what we are committed to do to confront the cultural and systemic forces that sustain racism," Parkin said in a statement that was released to Adidas employees last week. "We know we must do more to create an environment in which everyone feels safe, heard and with equal opportunity to advance in your careers."

After several days of employee protests over the company's culture, Adidas announced it is taking several actions aimed at boosting the number of people of color in its North American workforce, and make its workplace more inclusive. These include a \$120 million investment in black communities and a commitment to fill at least 30% of new positions in North America with black or Latinx employees. The company has also denounced racism and expressed support for the Black Lives Matter movement on social media.

Many companies have taken similar actions in recent weeks amid the moment of national reckoning over racial injustices sparked by the death of George Floyd.

"We have had to look inward to ourselves as individuals and our organization and reflect on systems that disadvantage and silence Black individuals and communities," Adidas CEO Kasper Rorsted said in a statement last week. "While we have talked about the importance of inclusion, we must do more to create an environment in which all of our employees feel safe, heard and have equal opportunity to advance their careers."

The company also acknowledged in last week's announcement that its actions might be "too little, too late."

"We've celebrated athletes and artists in the Black community and used their image to define ourselves culturally as a brand but missed the message in reflecting such little representation within our walls," the company's statement reads.

Some Adidas employees believe the company's actions are insufficient. They are calling on leadership to make an explicit apology for racism within the company and to be transparent about the additional steps it plans to take.



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"All of the Brand's commitments to date are symptomatic change and fails to recognize and unearth why our employees continue to experience racism and discrimination," the letter reads. "Public apology and acknowledgment is required as the start of anti-racism work and is the foundation for any of our 'actions' as a company can effectively land."

At a company meeting in Boston last year, Parkin allegedly said racism was "noise" only discussed in America, The Wall Street Journal reported last week.

In her statement to employees this week, Parkin said she "should have chosen a better word" during the meeting and apologized if she had offended anyone.

"As the Executive Board Member responsible for HR, it was my responsibility to make clear our definitive stance against discrimination, and this I did not," Parkin said. "My team and I are fully committed to improve our company culture to ensure equity, diversity and opportunity. That's a promise. That is my promise."

Discussion Questions

1. Discuss the importance of a human resources chief (such as Adidas HR executive Karin Parkin) appropriately responding to racial issues within an organization.

A human resource chief plays a crucial role for the organization in terms of legal compliance, fulfilling ethical obligations, and developing and maintaining a positive organizational culture.

2. As the article indicates, Adidas announced recently it is taking several actions aimed at boosting the number of people of color in its North American workforce and making its workplace more inclusive. These include a \$120 million investment in black communities and a commitment to fill at least 30% of new positions in North America with black or Latinx employees. Discuss the importance of such actions in accommodating equity, diversity, opportunity, and inclusion within an organization.

Such actions appear to be part of an affirmative action program. As indicated in response to Article 2, Discussion Question 1 included earlier in this newsletter, an affirmative action program seeks to cure past practices of discrimination by preferring individuals belonging to categories of people who have been historically subject to discrimination. Arguably, an affirmative action program is a positive, effective way to ensure equity, diversity, opportunity, and inclusion within an organization.

3. As the article indicates, from a marketing standpoint, Adidas has celebrated athletes and artists in the Black community and used their image to define the company culturally as a brand. In your reasoned opinion, is this enough to demonstrate that Adidas accommodates equity, diversity, opportunity, and inclusion within its company? Explain your response.



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This is an opinion question, so student responses may vary. In your author's opinion, marketing alone is not enough. Substance prevails over image.



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Of Special Interest

This section of the newsletter will assist you in addressing Video 1 (“Supreme Court Blocks Trump from Ending DACA”) of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Video 1— “Supreme Court Blocks Trump from Ending DACA”): “What Is DACA? And How Did It End Up in the Supreme Court?”

For an excellent description of the Deferred Action for Childhood Arrivals (DACA) program, please see the following article:

“What Is DACA? And How Did It End Up in the Supreme Court?”

<https://www.nytimes.com/article/what-is-daca.html?auth=login-facebook>

According to the article, the United States Supreme Court recently blocked the Trump administration from going ahead with its plan, announced in 2017, to end a program called DACA that protects about 700,000 young immigrants known as Dreamers from deportation.

The ruling did not address the merits of the program or the decision to end it; the court ruled only on whether the administration had acted lawfully in trying. The White House is free to try again.

Still, the 5-4 ruling, with Chief Justice John G. Roberts Jr. joining with the court’s four more liberal justices, was a significant setback for Mr. Trump, who had promised in his election campaign to “immediately terminate” the program.

Here’s what DACA, or the Deferred Action for Childhood Arrivals program, is all about.

What is DACA?

The program was introduced in 2012 by President Barack Obama as a stopgap measure to shield from deportation people who were brought into the United States as children and did not have citizenship or legal residency status. The protection lasts for two years at a time and is renewable. The program does not provide a pathway to citizenship.



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Participation in the program comes with a range of benefits. Along with permission to remain in the country, recipients can also get work permits, and can obtain health insurance from employers who offer it.

The ability to work legally has also allowed them to pay for school, pursue higher education and, in some states, to obtain drivers' licenses. They can qualify for in-state tuition and state-funded educational grants and loans in some states. Depending on where they live, they may also qualify for state-subsidized health insurance.

Since the Trump administration moved to end it in 2017, no new applications have been accepted, but immigrant advocates have managed to keep it partially alive for existing participants through legal challenges. Lower courts have decided that people who already have protected status would be able to renew it until the Supreme Court issued a final ruling.

The court's decision on Thursday maintains that status quo. The Trump administration must now either give up trying to end DACA, or else provide a lower court with a more robust justification for ending it than it has offered so far. That process is likely to take many months, putting the administration's assault on the program in limbo until after the November election.

DACA recipients are often referred to as Dreamers, after a similar piece of legislation called the Dream Act, which was introduced in 2001 and would have given its beneficiaries a path to American citizenship as well as protection from deportation.

On average, people shielded by DACA are now in their mid-20s; the oldest are in their late 30s. The vast majority were brought to the United States from Mexico, though many others were born in Central or South America, Asia or the Caribbean.

To qualify, an applicant had to be enrolled in high school or already have a diploma or G.E.D. or have served in the military. Contrary to what President Trump has said, people with serious criminal histories (meaning a felony or serious misdemeanor conviction, or three convictions for any type of misdemeanor) are not eligible.

Why was the DACA program begun?

Mr. Obama created it through an executive order in 2012 after more than a decade of failed negotiations in Congress over how to deal with the Dreamers. The Dream Act was never passed, but it gained widespread support among voters and, at various points, in each house of Congress.

Why is Trump trying to eliminate it?

After equivocating publicly over the program, Mr. Trump announced in 2017 that he would end DACA after nine conservative state attorneys general with hard-line views on immigration



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threatened to sue him, arguing that Mr. Obama had overreached his authority in creating it. Mr. Trump called on Congress to come up with a replacement.

His rescission order offered only the overreach argument, not any other reason for scrapping the program. The Supreme Court ruled that it was not legally sufficient.

Teaching Tip 2 (Related to Video 1— “Supreme Court Blocks Trump from Ending DACA”)

For a short (but excellent) video explaining the Deferred Action for Childhood Arrivals (DACA) program, please see the following video:

<https://www.youtube.com/watch?v=UzYDqQDNFzc>



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Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapter 25	Chapter 25	Chapters 3 and 25	N/A
Bennett-Alexander & Hartman, Employment Law for Business	Chapters 3, 5, 6 and 10	N/A	Chapters 3 and 13	N/A
Kubasek et al., Dynamic Business Law	Chapter 43	Chapters 42 and 43	Chapters 2 and 43	Chapter 42
Kubasek et al., Dynamic Business Law: The Essentials	Chapter 24	Chapter 24	Chapters 2 and 24	Chapter 24
Liuzzo, Essentials of Business Law	Chapter 33	Chapter 33	Chapters 2 and 33	N/A
Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapter 51	Chapter 51	Chapters 4 and 51	Chapter 51
McAdams et al., Law, Business & Society	Chapter 13	Chapter 13	Chapters 2, 13, and 16	N/A
Melvin, et al., Business Law and Strategy	Chapter 41	Chapter 41	Chapters 2 and 41	N/A
Melvin, The Legal Environment of Business: A Managerial Approach	Chapter 12	Chapter 12	Chapters 5 and 12	N/A
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapter 20	Chapters 20 and 21	Chapters 2, 12 and 20	Chapter 21
Sukys, Business Law with UCC Applications	Chapter 23	Chapter 23	Chapters 1 and 23	Chapter 23



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This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 14th Edition ©2021 (1260354660)
- Bennett-Alexander et al., Employment Law for Business, 9th Edition ©2019 (1260031691)
- Kubasek et al., Dynamic Business Law, 5th Edition ©2021 (1260354687)
- Kubasek et al., Dynamic Business Law: The Essentials, 5th Edition ©2020 (1260354717)
- Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17th Edition ©2019 (1260118827)
- Liuzzo, Essentials of Business Law, 10th Edition ©2019 (1260118819)
- McAdams et al., Law, Business, and Society, 12th Edition ©2018 (1260047687)
- Melvin et al., Business Law and Strategy, 1st Edition ©2021 (0077614674)
- Melvin et al., The Legal Environment of Business, A Managerial Approach: Theory to Practice, 4th edition ©2021 (1260354644)
- Pagnattaro et al., The Legal and Regulatory Environment of Business, 18th Edition ©2019 (1260118835)
- Sukys, Business Law with UCC Applications, 15th Edition ©2020 (1260204162)

