

# PUBLICATION

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## Supreme Court Sets Stage for Game-Changing 2019 Term for Employers

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**Between gerrymandering and the 'citizenship' question, the Supreme Court concluded its 2018 term with a bang. The Court is primed for further fireworks in its 2019 term. For employers, this includes whether Title VII prohibits discrimination based on sexual orientation, sexual identity, or both.**

The Supreme Court's terms run from October through June of the following year. The 2018 term concluded last month. The 2019 term begins later this year in October. During the terms, the Court hears arguments, decides cases, and issues opinions. Throughout the year, however, the Court decides which cases to hear. In the 2019 term, the Court will decide several cases with game-changing potential and far-reaching consequences for employers.

In two cases, the Court will address causation standards on certain employment claims. The element of a causal connection has been the subject of scrutiny since the Supreme Court's ruling in 2013 in *University of Texas Southwestern Medical Center v. Nassar*. There, the Court held that a causal connection for Title VII retaliation claims is shown if the employee demonstrates that the adverse employment action would not have occurred "but for" the employee's protected activity. Next term, in *Comcast Corp. v. National Association of African American-Owned Media*, the Supreme Court will decide whether "but for" causation is required for race discrimination claims under Section 1981 (42 U.S.C. § 1981). Similarly, in *Babb v. Wilkie*, the Court will decide whether "but for" causation is required under the federal-sector provision of the Age Discrimination in Employment Act. While *Babb* is limited to federal employers, the Court's decision in *Comcast Corp.* will impact all employers. Should the Court impose "but for" causation, it will make it more difficult for employees to succeed on race discrimination claims under Section 1981.

In a separate case, *Intel Corp. Investment Policy Committee v. Sulyma*, the Court will address the statute of limitations under ERISA. Specifically, the Court will decide when a plaintiff discovers his or her claim under ERISA, thereby starting the running of ERISA's three-year statute of limitations. The case is particularly interesting because there is no dispute that the plaintiff, Mr. Sulyma, received information necessary to bring an ERISA claim. Mr. Sulyma, however, alleges that he did not read – or could not remember reading – the information he received. The Court, in turn, will decide if Mr. Sulyma's inaction impacts when the statute of limitations started to run – for example, upon his physical receipt of the necessary information, or upon his reading and having actual knowledge of the necessary information.

Finally, in a series of related cases, the Court will decide whether Title VII prohibits discrimination based on sexual orientation, sexual identity, or both. The three cases are: (1) *R.G. & G.R. Harris Funeral Homes Inc. v. E.E.O.C.*; (2) *Bostock v. Clayton County, Georgia*; and (3) *Altitude Express Inc. v. Zarda*. Each case has similar but distinct facts, and each case presents with similar procedural histories. We have followed this issue for some time, and you can read more about them [here](#), [here](#), [here](#), and [here](#). Ultimately, the Court's decision in these cases will have far-reaching consequences on employers and the workplace.

For additional information regarding the Supreme Court's upcoming cases or other workplace issues, please contact the author, [Zachary B. Busey](#), or any member of the [Labor & Employment Group](#).

