



## WHAT DOES THE SUCCESSFUL NOMINATION OF NEIL GORSUCH TO THE SUPREME COURT MEAN FOR EMPLOYERS?

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On April 10, 2017, Judge Neil Gorsuch was sworn in as the newest Associate Justice of the Supreme Court of the United States. He now fills the seat left by the unexpected death of Justice Antonin Scalia more than a year ago. It's been a long and windy road getting here. After Justice Scalia's passing in February 2016, President Barack Obama nominated Chief Judge of the United States Court of Appeals for the D.C. Circuit, Merrick Garland, to succeed Justice Scalia in March 2016. However, with the Presidential election on the horizon, Senate Republicans refused to consider the nomination and hold a vote. As a result, Judge Garland's nomination expired on January 3, 2017.

Just 11 days after the inauguration, President Donald Trump nominated Gorsuch to the Supreme Court. After days of confirmation hearings, on April 6, 2017, Senate Democrats attempted to derail the nomination using a filibuster. However, due to a change in the Senate rules often referred to as the "nuclear option," Senate Republicans were able to break the filibuster with a simple majority of 51, rather than the 60 votes typically needed. With the filibuster dead, on April 7, the Senate confirmed Gorsuch's nomination. So what might the newest Justice mean for employers?

The addition of Judge Gorsuch to the Supreme Court means that it is likely to continue its pro-employer stance. Notably, during his tenure as a United States Court of Appeals for the Tenth Circuit Judge, Gorsuch sided with employers on a number of issues. For example, he agreed with and joined the majority of the court in the Tenth Circuit's decision in [Hobby Lobby Stores Inc. v. Sebelius](#), a decision that held that under the Religious Freedom Restoration Act, employers did not have to provide contraceptive coverage in their health insurance plans for employees as required by the Affordable Care Act if doing so would violate their religious beliefs. That Tenth Circuit decision was ultimately upheld by the Supreme Court in a 5-4 decision in [Burwell v. Hobby Lobby Stores, Inc.](#) Now-Justice Gorsuch also frequently sided with employers on [ERISA](#) issues and cases involving the National [Labor Relations](#) Board.

It may not be long before we get to see the true impact. The Supreme Court will soon address whether companies can require workers to waive their right to pursue class action lawsuits. Since 2012, the NLRB has taken the position that waiver agreements violate an individual's right to engage in concerted protected activity under the National [Labor Relations](#) Act. When the issue came before various Circuit Courts of



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Appeals, different appeals courts came to different conclusions as to whether class action rights could, in fact, be waived. Justice Gorsuch and the rest of the Court will get to resolve the “circuit split” on this issue.

Each year the Supreme Court decides cases that affect employers nationwide, and Justice Gorsuch may have an important impact on those decisions.