

Senate Confirms ‘Proemployer’ Gorsuch to Supreme Court

By [Kate McGovern Tornone](#), Editor

The Senate has confirmed President Trump’s nominee, Neil Gorsuch, to the U.S. Supreme Court. Because Gorsuch is known for adhering to the letter of the law, his confirmation likely is good news for employers, experts say.



Democrats initially filibustered his confirmation but Republicans invoked the “nuclear option” and changed the Senate rules to allow them to break filibusters of Supreme Court nominees with only 51 votes. Previously, that required 60. On April 7, the Senate confirmed Gorsuch 54-45.

Employment law attorneys have said that he is known for adhering to the letter of the law. That means he won’t be creating any new rights through judicial activism, [John Husband](#), a senior partner at [Holland & Hart](#) in the judge’s hometown of Denver, [previously told BLR](#)®.

Gorsuch offered a similar sentiment following his nomination, promising to interpret the Constitution and laws strictly. “[I]n our legal order, it is for Congress and not the courts to write new laws,” he said. “It is the role of judges to apply, not alter, the work of the people’s representatives. A judge who likes every outcome he reaches is very likely a bad judge, stretching for results he prefers rather than those the law demands.”

That philosophy is good news for employers, said Husband, an editor of the [Colorado Employment Law Letter](#). “He’s an excellent choice for employers. He follows the law to a T,” he said. “He’s going to be a very, very pro-employer justice.”

Gorsuch, who comes from the 10th U.S. Circuit Court of Appeals, is known for his role in the *Hobby Lobby* decision. In that case, he joined the 10th Circuit’s opinion that employers can claim a religious exemption from the Affordable Care Act’s mandate to cover birth control in health plans. The Supreme Court later agreed.



Gorsuch's other employment-related opinions, however, had varying outcomes, according to [H. Juanita Beecher](#), of counsel with [Fortney & Scott](#) and an editor of [Federal Employment Law Insider](#). "He doesn't always side with employers and he doesn't always side with employees," she said. His confirmation would simply bring the Court back to where it was with Justice Antonin Scalia, she said.

Federal regulations, however, could face additional scrutiny by the Supreme Court now, according to Beecher. It's no secret that Gorsuch isn't a fan of "*Chevron* deference," a legal standard under which courts defer to a federal enforcement agency's regulatory interpretation of a law. Regulations issued by the Obama administration could be particularly at risk, she said.

One of Gorsuch's first opportunities to weigh in on an employment law issue may be a case challenging class action waivers. The high court agreed earlier this year to hear a trio of wage and hour cases involving arbitration agreements that require workers to waive their right to pursue employment claims as a group. (See [Supreme Court Will Consider Class Action Waivers](#).)

Gorsuch also may have the opportunity to consider whether Title VII of the Civil Rights Act of 1964 prohibits discrimination based on sexual orientation. The question has caused a split among the federal courts of appeal and could soon be ripe for the Supreme Court's review, Beecher and Husband said. (See [In 'Landmark' Ruling, Court Says Sexual Orientation Discrimination is Illegal](#).)