

June 28, 2013

## U.S. Supreme Court Establishes Standard for Title VII Retaliation Claims

On June 24, the U.S. Supreme Court ruled that Title VII retaliation claims require employees to demonstrate an employer would not have taken an adverse employment action against them "but for" unlawful retaliation, rather than the lesser "mixed-motive" standard. In *University of Texas Southwestern Medical Center v. Nassar*, the employee, a medical doctor and faculty member at the university hospital, complained about alleged harassment based on his race and national origin. The employee later resigned from his dual position thinking he would be reinstated as a physician. When the university did not offer him reinstatement, the employee sued for unlawful retaliation under Title VII. The employee obtained a favorable jury verdict, which was affirmed by the U.S. Court of Appeals for the Fifth Circuit. The central question on review before the Supreme Court was whether the Fifth Circuit erred in applying a mixed-motive causation analysis to the Title VII retaliation claim. The mixed-motive analysis only requires proof that an employer had mixed motives for taking an employment action that included an unlawful motive, as opposed to the stricter but-for causation standard, which requires proof the alleged adverse employment action occurred because of an unlawful motive.

The Supreme Court rendered a five-justice majority decision that the stricter but-for causation standard should apply to Title VII retaliation claims. This requires proof the "unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer," Justice Kennedy wrote for the majority. The Court reasoned that when Congress made numerous amendments to Title VII in 1991, it did not specifically include reference to the mixed-motive standard of proof for retaliation claims. The Court also noted the significant rise in retaliation claims, which nearly doubled at the EEOC over the past 15 years. The Court expressed concern that lowering the causation standard could increase the filing of frivolous retaliation claims.

The dissenting justices disagreed, and Justice Ginsburg commented, "[T]he Court appears driven by a zeal to reduce the number of retaliation claims filed against employers." The dissent also indicated that this decision, along with the recent decision of *Vance v. Ball State*, which limited the definition of "supervisor" in Title VII cases, should cause Congress to act with new legislation.

Although the *Nassar* decision establishes a more favorable legal standard for employers in defending retaliation claims, employers still must proceed cautiously before taking any adverse action against an employee who has engaged in protected activity. Retaliation claims arising from such circumstances continue to proliferate and can be time-consuming, expensive and challenging to defend.