

CLIENT NEWS BRIEF

U.S. Supreme Court Holds that Employees Claiming Retaliation Must Prove Adverse Employment Action Occurred Because of Their Protected Activity

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In 1991, Congress amended Title VII of the Civil Rights Act of 1964 to permit an employee to establish liability against his or her employer for discrimination by demonstrating "that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice." This standard is known as the mixed-motive test and is applied to the Title VII category of discrimination known as status-based discrimination. Status-based discrimination is discrimination based on an individual's race, color, religion, sex or national origin. Title VII also protects employees from being fired, demoted, harassed, or otherwise retaliated against for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination. To date, the courts have been divided as to whether the mixed-motive standard applies to Title VII retaliation claims. The U.S. Supreme Court's June 24, 2013, decision in *University of Texas Southwestern Medical Center v. Nassar* (June 24, 2013) ___ U.S. ___ (2013 WL 3155234)) answered this question.

In *Nassar*, the plaintiff, a physician of Middle Eastern descent employed by a public university and its affiliated hospital, claimed that racially and religiously motivated harassment led him to quit his job at the university. Further, he claimed that his employment offer with the hospital was revoked in retaliation for his complaints about the harassment. After exhausting administrative remedies, Mr. Nassar filed a Title VII suit in federal court alleging both status-based discrimination and retaliation. The court applied the mixed-motive test and instructed the jury that retaliation claims, like status-based discrimination claims, required a showing that retaliation was merely a motivating factor for the revocation of employment. A jury found for Mr. Nassar on both claims.

The court of appeal upheld the trial court's application of the mixed-motive standard to Title VII employee retaliation claims. However, the U.S. Supreme Court vacated the court of appeal's decision. The Court relied on the structure and language of Title VII to conclude that Mr. Nassar was required to prove that the hospital only revoked his employment offer because he had publically complained about harassment at the university, not because of other legitimate reasons.

In *Nassar*, the Court held that when employees bring Title VII retaliation claims, they must demonstrate that the conduct against them would not have occurred "but-for" their protected activity. This "but-for" test is a more difficult standard to meet than the mixed-motive test because it requires a showing of direct causation. Under the "but-for" test, even if retaliation was a motivating factor for the employer's adverse action, the employer may not be liable if the adverse action would have happened regardless of retaliation. Retaliation for a prior complaint of discrimination must be the sole reason behind the employer's actions.

The Court reasoned that Congress purposefully separated retaliation and status-based discrimination into different sections of Title VII. Under the Court's reasoning, if Congress had intended for the mixed-motive test to extend to



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retaliation claims, it would have expressly said so in its 1991 amendments to Title VII.

The U.S. Supreme Court acknowledged that its decision is different from the longstanding view regarding Title VII retaliation claims as promulgated by the Equal Employment Opportunity Commission (EEOC) in guidance manuals, and explained that the Court's decision is dispositive on the issue. For public employers, the U.S. Supreme Court's application of the "but-for" standard to retaliation claims under Title VII means that it will be harder for employees to bring those claims against employers because the trial court must look for a direct causal connection between the employer's conduct and the employee's protected activity. This is significant for employers who may want to take adverse action against an employee for work-related reasons, but feel unable to do so because the employee has previously made a discrimination complaint.

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