

Supreme Court: Proving Title VII Retaliation Claim Requires “But-For” Causation

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Adding to a recent string of victories for employers, the U.S. Supreme Court ruled on June 24, 2013, that claims for retaliation under Title VII of the Civil Rights Act of 1964 must be proved “according to traditional principles of but-for causation.”

The decision, *University of Texas Southwestern Medical Center v. Nassar*, No. 12-484 (Sup. Ct. June 24, 2013), means that plaintiffs bringing Title VII retaliation claims will be required to prove that an employment action “would not have occurred” if not for the employer’s retaliatory motive. Therefore, the decision settles the question of causation in Title VII retaliation claims. More broadly, however, it also provides new evidence that the lessened “motivating-factor” standard, which allows plaintiffs to prevail as long as they can prove that discrimination was just one of many factors in an employment decision, is a unique statutory creation that is limited to Title VII race, color, religion, sex, and ethnicity claims. This ruling effectively overrules the opposite position taken by the EEOC, and therefore is unquestionably good news for employers.

The case arose from a dispute between a physician and his employer, a medical school. The medical school maintained an affiliation agreement with a hospital that permitted faculty members to fill all hospital staff positions. When the physician perceived that his newly-hired superior was discriminating against him based upon his religion and ethnicity, he resigned from the school and sought to become a full-time employee of the hospital. The hospital initially agreed, but withdrew its offer when a representative of the school protested. Although the school representative had a legitimate reason for opposing the offer (i.e., the affiliation agreement required that all staff physicians be faculty members of the school), he also publicly opposed the physicians’ discrimination allegations and defended the accused superior. The physician subsequently filed suit against the medical school and the hospital under Title VII, alleging that the hospital’s decision to withdraw his offer was in retaliation for his speaking out about the alleged discrimination.

Title VII prohibits employment discrimination based upon seven factors. Five of the factors are protected characteristics (race, color, religion, sex, and ethnicity) and two are protected conduct (opposition to

discrimination or support of another's opposition). In 1991, Congress amended Title VII to make clear that in cases involving the first five "characteristic" factors, the plaintiff need only show that a prohibited trait "was a motivating or substantial factor in the employer's decision," even if other factors also could explain the decision.

The question raised in *Nassar* was: does that burden of proof also apply to the latter two "conduct" factors? If the "motivating-factor" standard applied, the plaintiff could prove his case by showing that the representative was in part retaliating because of his discrimination complaints; if the "but-for" standard applied, however, the plaintiff most likely could not prove his case because the affiliation agreement also played an important role in the hospital's decision to withdraw the offer.

The majority, overruling the Fifth Circuit Court of Appeals, held that the stricter "but-for" test applies to retaliation claims, requiring a showing "that the harm would not have occurred" in the absence of the retaliatory motive. "Congress acted deliberately when it omitted retaliation claims from" the "motivating-factor" portion of Title VII," Justice Kennedy wrote for the majority, and "[i]f Congress had desired to make the motivating-factor standard applicable to all Title VII claims, it could have."

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Topics

Retaliation, Title VII, Burden Of Proof