

Retaliation Under Title VII must be Proven Under Traditional “But For” Causation Doctrine

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Where a person seeks compensation for injury resulting from wrongful conduct, there must be a demonstrated connection between the wrong alleged and the injury — i.e., causation. The default rule, developed in connection with tort law, is that the plaintiff must show “the harm would not have occurred” in the absence of the wrongful conduct. This is also known as the “but for” causation standard.

However, [Title VII of the Civil Rights Act](#), which protects employees from work place discrimination, provides a different standard for proving causation in cases involving discrimination on the basis of race, color, religion, sex or national origin (also called “status-based discrimination”). Under the specific language of the statute, the plaintiff need only prove that status-based discrimination was “a motivating factor” in the employer’s conduct.

In *University of Texas Southern Western Medical Center v. Nassar*, the [United States Supreme Court](#) dealt with the question of whether this lessened causation standard also applies to claims of unlawful employer retaliation under Title VII.

In a 5-4 decision (with the liberal block of the Court dissenting), the Court ruled that the ordinary standard for causation applies to retaliation claims under Title VII. In other words, the “but for” causation standard (not the more lenient “motivating factor” standard) applies, effectively making it harder for an employee to prove causation in a retaliation case than in a status-based discrimination case.

The Court’s reasoning was based on the history of the passage of Title VII and its revisions and the structure of the statute (with status-based discrimination and retaliation sections being placed in different parts of the statute). The Court also noted the increasing frequency of retaliation claims, and the abuses to which retaliation claims could be subjected if a more lenient standard was applied.

If you would like to discuss the *Nassar* case, or the provisions of Title VII in general, please contact [the author](#).

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