



LABOR & EMPLOYMENT LAW ALERT

The United States Supreme Court Narrows the Scope of Liability for Retaliation Claims Under Title VII

On June 24, 2013, in a 5-4 decision authored by Justice Anthony Kennedy, the Supreme Court held that a plaintiff alleging unlawful retaliation for protected opposition to suspected discrimination under Title VII must prove that retaliation was the “but-for” cause of the adverse employment action. *University of Texas Southwestern Medical Center v. Nassar*, 133 S.Ct. 2517 (2013). In so holding, the Court reversed a U.S. Court of Appeals for the Fifth Circuit decision that a Title VII retaliation plaintiff could prevail if he/she showed retaliation was merely a “motivating factor,” among others, for an employer taking adverse action.

Writing for the majority, Justice Kennedy said the provision in the Civil Rights Act of 1991 addressing “mixed motive” claims only pertains to “status discrimination” under Title VII, meaning alleged discrimination based on race, sex, and other protected characteristics, and not to retaliation claims, which are treated separately under Title VII. The Court cited its decision in *Gross v. FBL Financial Services Inc.*, 557 U.S. 167 (2009), in which the Court ruled that the “but-for,” rather than “mixed-motive,” analysis applies under the Age Discrimination in Employment Act, as instructive in reaching the same conclusion regarding Title VII retaliation claims.

The Court has therefore adopted a narrower standard of liability for Title VII retaliation claims. The immediate impact should be more summary judgment rulings for employers on Title VII retaliation claims. However, it remains to be seen whether Congress will pursue the suggestion in the dissenting opinion of Justice Ginsburg that the decision should be overturned by Congress through legislation expressly adopting the broader “motivating factor” standard for retaliation claims under Title VII.

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