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Two U.S. Supreme Court Decisions Give Some Relief to Employers From Title VII Claims

In a pair of recent U.S. Supreme Court decisions, the Court strengthened two standards in ways that will make it more difficult for employees to prove retaliation claims brought under Title VII.

- In [*University of Texas Southwestern Medical Center v. Nassar*](#) (UT), the Court ruled that a plaintiff complaining of retaliation for protected conduct (for example, filing a grievance about discrimination in the workplace) must demonstrate that the retaliatory conduct, such as termination, discipline, failure to promote or reassignment with significantly different responsibilities would not have occurred “but for” an improper motive. By holding that retaliation must be “the cause” of the employer’s unlawful conduct, the Court rejected the more lenient rule that retaliation may be “a cause”.
- In [*Vance v. Ball State University*](#) (Vance), the Court ruled that the class of employees who may be deemed “supervisors”, and therefore within the scope of Title VII, is limited to those employees who are empowered to take a tangible employment action against the person claiming harassment. This decision overrules some U.S. Court of Appeals decisions that had extended supervisory liability to persons who could recommend a tangible employment action or direct the work of the party alleging harassment.

What the Decisions Mean to Employers

On a practical level, the UT decision’s stricter “but for” standard of proof may discourage a potential Title VII claim where there is more than one motivation for the adverse employment action. It should be noted, however, that the less strict standard of proof for status-based discrimination, as opposed to retaliation, still remains applicable. With regard to allegations of discrimination, the Court said, “It suffices instead to show that the motive to discriminate was one of the employer’s motives, even if the employer also had other, lawful motives for the decision.” And further, the Court noted that in proving discrimination, “an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was **a motivating factor** [emphasis added] for any employment practice, even though other factors also motivated the practice.”

In Vance, the Court clarified specifically who qualifies as a “supervisor” such that his or her conduct is attributable to the employer for the purposes of workplace harassment liability. The liability standard shifts the burden of proof to the employer to establish an affirmative defense. If the harassing employee were merely a “co-worker”, rather than a supervisor, the employer would not be liable unless the plaintiff could prove the employer was negligent in controlling working conditions. While the decision in Vance resolves some ambiguity for employers, it is still advisable for employers to ensure that records, such as job descriptions and other paperwork that might be evidence of supervisory or co-worker status, are regularly reviewed and revised to comport with actual working conditions.

About the Authors

For over 30 years, [Sean Kelly](#) has focused his practice on counseling employers and defending employment cases, and has successfully tried many employment cases to verdict. He is certified by the Supreme Court of New Jersey as a Civil Trial Attorney, has been repeatedly included in New Jersey Monthly Magazine's list of New Jersey “Super Lawyers,” holds the highest rating awarded by the Martindale-Hubbell Lawyers Directory, has been named a Master of two separate American Inns of Court, and is included on the New Jersey Superior Court roster of court-approved mediators.

[DanaLynn Colao](#) focuses her practice on business litigation with an emphasis on employment issues. She counsels and provides training for clients on a wide array of issues that arise in the workplace including medical leaves of absence, wage and hour claims, employment agreements and non-compete agreements. Strategic thinking and affirmative measures enable DanaLynn to significantly reduce potential liability for her clients. DanaLynn was selected to the *New Jersey Law Journal's* list of leading lawyers in the “Forty Under 40” selection and she has been listed since 2009 in the NJ Super Lawyers “Rising Star” category.

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