



United States Supreme Court Hands Down Two Significant Cases for Employers

06.26.2013

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On June 24 the United States Supreme Court handed down two significant and closely watched decisions affecting employers in Title VII cases. Both opinions came from a sharply divided court splitting five to four in both cases. The two cases were *Vance v. Ball State University* and *University of Texas Southwestern Medical Center v. Nassar*.

In *Vance v. Ball State* the Supreme Court tackled an open issue of who is a supervisor for purposes of the strict liability standard for tangible job actions in the harassment context. Answering a question that has divided various circuit courts since 1998, the Supreme Court determined that, under the *Faragher* and *Ellerth* standard, in order for an individual to be determined to be a supervisor that person must be empowered by the employer to take tangible job actions against the victim. According to the Supreme Court, such tangible actions are those that effect a significant change in the employment status of an employee such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing significant change in benefits.

In adopting this standard, the Supreme Court rejected what it classified as a nebulous definition of a supervisor advocated by the EEOC guidance. Specific to the facts of the *Vance* case, the Supreme Court determined that the fact that an individual could direct work assignments on a fairly routine basis was not significant enough to make her a supervisor as that term should be interpreted under Title VII. The Supreme Court pointed out that it believes its clarification of the standard will allow cases to be addressed more readily on summary judgment rather than having the cases go before juries who would then have to wade through multiple legal theories and jury instructions.

The second case, *University of Texas Southwestern Medical Center v. Nassar*, dealt with the proper causation standard for Title VII retaliation cases. Specifically the Supreme Court reviewed whether retaliation cases under Title VII are subject to a but for causation analysis or a motivating factor standard. The Supreme Court, applying a strict construction of Title VII's statutory language, ruled that

there are two types of unlawful activities under Title VII. The first is status based discrimination ? i.e. race, color, sex, national origin and religion. In such cases, 42 U.S.C. § 2000e-2(a) requires the lesser ?motivating factor? standard. However, the Supreme Court noted that, when addressing retaliation in Section 42 U.S.C. § 2000e-3(a), the statute specifically used the language ?because of.? As such, the Court held that, in Title VII retaliation cases such as age discrimination cases, the proper causation test is a ?but for? analysis. Accordingly, plaintiffs in retaliation cases must now establish that the reason for the adverse job action was solely related to the employee?s protected activity under Title VII. The Court was quick to note that, like its earlier decision in *Vance v. Ball State University*, the decision would streamline the litigation process in retaliation cases and permit more cases to be disposed of at the summary judgment stage.

These two Supreme Court decisions should factor into every defense of harassment and/or retaliation cases.

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