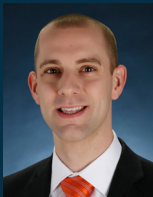


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Two Supreme Court Rulings Will Make Liability Issues Simpler for Employers

Vance v. Ball State University

Last week the United States Supreme Court issued its decision in [Vance v. Ball State University](#), which not only provides more clarity with respect to those employees who may be viewed as supervisors under Title VII, but also helps employers to better manage liability for illegal discrimination and/or harassment in the workplace.

Under [Vance](#), supervisors are those individuals who are empowered by the employer to take tangible employment actions against the alleged victim, such as hiring and firing. In particular, the Court noted that if an employee can take action which would result in “direct economic harm,” such as in the performance evaluation process, then that employee could be considered a supervisor. The Court further noted that employees with control over just daily tasks or assignments, without more, would most likely not meet this standard. Thus, the Court rejected the Equal Employment Opportunity Commission’s (EEOC) broad and vague definition of a supervisor, which included anyone who exercised discretion over another’s daily work.

The distinction drawn by the Court between supervisors and nonsupervisory employees is critical because an employer can be held strictly liable for the illegal harassment by a supervisor, even if it was unaware of the misconduct. On the other hand, an employer can’t be held responsible for the actions of nonsupervisory employees (co-workers), if it can show, by way of affirmative defense, that it exercised reasonable care to prevent and correct any harassing behavior. Given the clarification provided in [Vance](#), even in those cases where there is a true factual dispute over the alleged harasser’s ability to take tangible employment actions, the preliminary question of supervisory status should be relatively easy to resolve.

University of Texas Southwestern Medical Center v. Nassar

The very same day [Vance](#) was decided, the Supreme Court also issued its decision in [University of Texas Southwestern Medical Center v. Nassar](#), which will be helpful to employers when faced with Title VII retaliation claims. The Court adopted a “but-for” causation standard, which is a higher standard of proof for establishing the causation element of such claims. Under this new standard, plaintiffs are now required to show that they suffered adverse employment actions because of their involvement or participation in protected activity.



Prior to Nassar, a plaintiff could succeed on a retaliation claim by establishing that his or her protected activity was simply a “motivating factor” (even if not the primary reason) for the adverse employment action, which is a lesser standard of proof.

While Nassar may not actually reduce the number of Title VII retaliation claims that are filed (which is an issue the Supreme Court sought to address, as it noted that the number of retaliation claims has almost doubled in the last 15 years), it appears that Nassar will make it more difficult for plaintiffs to prevail on such claims.

Nassar will certainly affect the way Federal Courts deal with Title VII retaliation claims. It remains to be seen, however, whether this case will have an effect on State Courts. Indeed, when faced with claims of age discrimination brought under Connecticut’s antidiscrimination statute, recent State Court decisions have refused to apply the “but-for” standard established by the Supreme Court concerning ADEA claims, and instead have continued to apply the lesser “motivating factor” standard.

Practical Advice:

In light of Vance and Nassar, employers should ensure that they have clear policies against discrimination, harassment and retaliation and that their managerial and/or supervisory employees are properly trained. Employers should also ensure that their employees are fully aware of all avenues available for reporting complaints of discrimination or retaliation. Finally, employers should ensure that their investigation of complaints and the business reasons for taking adverse employment actions against employees are well documented.

Concerning Vance, employers should take a closer look at the job descriptions posted for supervisory positions to ensure that those descriptions clearly define the scope of authority the supervisory position would exercise over other employees. In fact, the Court in Vance noted that the petitioner relied on a job description in an effort to establish the supervisory role of the employee whom she alleged had created a racially hostile work environment. While not dispositive, a court in an employment discrimination case may consider the employer’s job description as evidence of the supervisory nature of a position in question, so it can resolve the issue as a matter of law before trial.

Questions or Assistance?

If you have any questions regarding this alert, please contact Jarad M. Lucan at 860-251-5785 or jlucan@goodwin.com, or Clarisse N. Thomas at 203-324-8164 or cthomas@goodwin.com.

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