

## CASE UPDATES

Decades of strategic case development and trial experience.

# WSHB EMPLOYMENT CASE UPDATE: SUPREME COURT RULINGS DEFINE STANDARDS FAVORABLE TO EMPLOYERS

9.5.13

The United States Supreme Court has issued two rulings in separate cases which have resulted in higher standards for the maintenance of employment lawsuits.

***Univ. of Texas Sw. Med. Ctr. v. Nassar***  
**133 S. Ct. 2517 (2013)**

In this decision, authored by Justice Kennedy, the Supreme Court of the United States establishes the "but for" standard as the standard necessary for proving retaliation claims in Violation of title VII of the Civil Rights Act.

### Background

Plaintiff, a faculty member of the University of Texas Southwestern Medical Center and physician of the University's affiliated Hospital, filed suit against his employer alleging Title VII violations for discrimination based upon his ethnicity and religion. According to plaintiff, this discrimination resulted in his constructive discharge as well as retaliation in the form of the employer's denial of permanent employment to plaintiff.

Plaintiff formally complained to his supervisor's superior, that his supervisor was biased against him on account of his religion and ethnicity. According to Plaintiff, his supervisor would make negative comments about Middle Easterners and Muslims. As a result of this alleged discrimination, Plaintiff claims he was constructively discharged when he resigned from his faculty position. Plaintiff wrote a letter to the University explaining why he resigned, which included his supervisor's bias and discrimination. At the time of Plaintiff's resignation, preliminary negotiations with the Hospital had already commenced relative to his interest in a permanent position.

The University has an affiliation agreement which requires the hospital to offer vacant staff physician posts to current University faculty members. Plaintiff was offered a position after his resignation. The superior whom plaintiff complained to

### RELATED SERVICES

Commercial and Business Litigation

## CASE UPDATES

about the bias and discrimination informed the University that the offer was inconsistent with the affiliation agreement. As a result, Plaintiff claimed the supervisor interfered with his job offer after reading the "humiliating" letter plaintiff wrote about his colleague.

### **Holding**

In order to succeed in Title VII retaliation claims, employees must prove that the alleged retaliatory conduct would not have occurred "but for" the defendant's retaliatory act. The lower "motivating-factor" standard does not apply to retaliation claims and only applies to status-based discrimination.

### **Significance**

Employment discrimination and retaliation claims are "ever-increasing." Accordingly, the impact of this decision is of great significance to both employers and employees.

As a practical matter, this decision makes it more difficult for employees to prove their retaliation claims by elevating the standard from "motivating factor" to "but for". This will force employees to provide solid evidence showing that but-for their employer's retaliatory act, they would not have suffered the claimed injury.

### ***Vance v. Ball State University*** **133 S. Ct. 2434 (2013)**

The Supreme Court defines what constitutes a "supervisor" for purpose of vicarious liability under Title VII for workplace harassment.

### **Background**

The plaintiff, an African-American employee, claimed that Davis, a fellow co-worker whom plaintiff considered to be her "supervisor," was hostile towards her, gave her weird looks, and intimidated her. Defendant tried to fix the problem, but plaintiff claimed the situation continued. Plaintiff brought a Title VII lawsuit alleging that she experienced a racially hostile environment in violation of Title VII, and because the alleged harasser was plaintiff's "supervisor," her employer was liable for the supervisor's creation of a racially hostile work environment. The Court determined that Defendant was not negligent because it reasonably responded to the incidents it became aware. Of more significance, the Court ruled that Davis was not plaintiff's supervisor because he did not have "supervisor status".

### **Holding**

An employer may be vicariously liable for an employee's unlawful harassment only when the employer has empowered that employee to take tangible employment actions against the victim. An employee with such power qualifies as a "supervisor." In order for an employee to have supervisor status they must have the power to hire, fire, demote, promote, transfer or discipline another employee.

### **Significance**

## CASE UPDATES

The Vance decision set a clear and workable definition of the meaning of "supervisor." The Supreme Court made clear that if a party files a Title VII claim for workplace harassment against his or her employer, he or she must show that the alleged harasser is a "supervisor" in order for the employer to be vicariously liable. Going forward, an employee is a "supervisor" for purposes of vicarious liability if the employer empowered the challenged employee to take "tangible employment actions" against the victim. One who simply controls the day-to-day work activities of another employee is not sufficient to categorize an employee as a supervisor. From an employer's perspective, the Vance decision sets a higher standard for employees to meet when bringing a vicarious liability claim under Title VII.