

EMPLOYMENT SERVICES ALERT

6/27/13

United States Supreme Court Decision Makes it Easier for Employers to Defeat Title VII Retaliation Claims

On Monday, June 24, 2013, the U.S. Supreme Court, in *University of Texas Southwestern Medical Center v. Nassar*, ruled that to prove a retaliation claim under Title VII, a plaintiff must demonstrate that the adverse employment action at issue (termination, discipline, etc.) would not have occurred but for an improper retaliatory motive on the employer's part. In other words, a plaintiff alleging retaliation will now have to prove that his/her protected activity, e.g., complaining of race, age or gender discrimination, was "the" cause of the alleged retaliation – not simply "a" cause.

This decision is a significant victory for employers. Prior to this decision, courts applied the more lenient "motivating factor" standard to retaliation claims. Under the "motivating factor" standard, a plaintiff only needed to show that retaliatory intent was among the motivating factors behind the adverse action. The high court's endorsement of the "but for" standard means that a plaintiff must now show that retaliatory intent was the only factor behind the adverse action.

The *Nassar* decision should curtail employees asserting discrimination in anticipation of being fired or disciplined, and then claiming the discipline was in retaliation for complaining of discrimination. It should also lead to fewer frivolous retaliation claims and increase the number of retaliation claims dismissed by summary judgment.

Please contact the following Roetzel attorneys for further information:

Karen D. Adinolfi

330.849.6773 | kadinolfi@ralaw.com

Aretta K. Bernard

330.849.6630 | abernard@ralaw.com

Robert E. Blackham

216.615.4839 | rblackham@ralaw.com

Eric G. Bruestle

513.361.8292 | ebruestle@ralaw.com

Denise M. Hasbrook

419.254.5243 | dhasbrook@ralaw.com

Paul L. Jackson

330.849.6657 | pjackson@ralaw.com

Doug M. Kennedy

614.723.2004 | dkennedy@ralaw.com

Jaime A. Maurer

239.338.4258 | jmaurer@ralaw.com

Jon R. Secrest

614.723.2029 | jsecrest@ralaw.com

Doug E. Spiker

216.696.7125 | dspiker@ralaw.com

Denise Wheeler

239.338.4259 | dwheeler@ralaw.com

Alex J. Kipp

216.820.4204 | akipp@ralaw.com

Nathan Pangrace

216.615.4825 | npangrace@ralaw.com

Shawn A. Romer

330.762.7996 | sromer@ralaw.com

Emily C. Wilcheck

419.254.5260 | ewilcheck@ralaw.com