

# Univ. of Texas v. Nassar The United States Supreme Court Limits Workplace Retaliation Claims.

The Supreme Court, in *The University of Texas Southwestern Medical Center v. Nassar*, No. 12-484, made it more difficult for employees to win retaliation lawsuits under Title VII. The Court decided a worker who claims retaliation must prove that retaliation was the reason the employer took the adverse action, not merely one of several motives.

The Court's decision subjects such claims to a "but-for" causation test, as opposed to the "motivating factor" test that applies to typical status-based discrimination claims under Title VII.

When Nassar, a faculty member at the University of Texas resigned, he sent a letter to several other faculty members complaining that his resignation was the result of ethnic and religious harassment and discrimination. One of Nassar's supervisors took issue with the manner in which Nassar left, and thereafter took steps to block Nassar's continued employment at a hospital affiliated with the university. Nassar sued for discrimination and constructive discharge based on his ethnicity and religion, and for retaliation, alleging his former employer retaliated against him by blocking his employment at the hospital. For its part, the university defended stating that, even absent any retaliatory motive, the hospital's employment of Nassar was a breach of the agreement between the hospital and the university – a non-discriminatory motive for its objection to Nassar's

employment.

After a jury verdict in Nassar's favor, the university appealed. At issue was the causation standard applicable to Nassar's retaliation claim. There is no doubt that under Title VII, typical status-based discrimination claims are subject to the "motivating factor" causation test. An employee must show that a discriminatory motive (like religious or ethnic bias) was merely one of the factors contributing to the challenged actions. This test is the result of the well-known *Price Waterhouse* case and a resulting Congressional amendment to Title VII.

However, Congress did not amend the section of Title VII relating to retaliation claims. Thus, after an analysis of the differing verbiage in the various sections of Title VII, the Supreme Court held that "retaliation claims must be proven according to the traditional principles of but-for causation" and this requires proof that the alleged retaliation would not have occurred in absence of a retaliatory motive. The verdict against the University of Texas was reversed.

Employers have struggled with retaliation claims; they can be problematic even when no discrimination occurred in the first place. The bottom line is the *Nassar* opinion will be instrumental in defending your company against bogus retaliation claims and, more importantly, gives employers a bit more comfort when making performance and disciplinary actions regarding employees who have previously challenged alleged discrimination. Let us know what you think the implications of this decision are for your business!

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[Kathryn D. Terry](#) is a director at Phillips Murrah and a member

of the Firm's Litigation Department. Kathy advises employers on employment related matters, including training, discipline and compliance, and represents them from the onset of litigation and through all appeals. Her practice also includes insurance coverage, insurance defense, civil and constitutional rights litigation.