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## Supreme Court Clarifies Title VII Retaliation Framework

On June 24, 2013, the Supreme Court of the United States clarified the standard of proof required to succeed in a retaliation claim under Title VII of the Civil Rights Act of 1964 ("Title VII"). In the *University of Texas Southwestern Medical Center v. Nassar*, the Court held that, to successfully bring such a claim, employees must prove that an employer would not have taken an adverse employment action, unless the employer had a retaliatory motive.

**Facts.** University of Texas faculty member, Dr. Naiel Nassar, alleged that his supervisor harassed him based on his religion and ethnic heritage. After complaining to the University's Chair of Internal Medicine, Dr. Nassar resigned from his faculty position and arranged to work at the University's hospital. The University initially offered Dr. Nassar the hospital position, but withdrew its offer based on the Chair's protests. Among other claims, Dr. Nassar brought a Title VII retaliation claim, alleging that the University withdrew its offer in retaliation of his complaints, which was a legally protected activity. A jury awarded him more than \$3 million in damages based on both claims.

**Question.** The Court addressed whether, to be successful in bringing an action under Title VII's retaliation provision, an employee must prove that: (1) the employer's discriminatory motive was a "motivating factor" in the employer's decision to take the action; or (2) the employer would not have taken the adverse action, *unless* the employer had a retaliatory motive – what the courts have referred to as "but for" causation.

**Ruling.** In a 5-4 decision, the Court held that the second, more restrictive test applies to Title VII retaliation claims. In other words, to be successful in a retaliation claim, an employee must prove that the employer would not have taken an adverse employment action, unless it was retaliating against the employee for complaining about or opposing discrimination or harassment.

**Impact on Employers.** This decision creates a higher burden of proof for employees who want to bring retaliation claims. Practically, the Court's decision may lessen the frequency of retaliation claims, lower settlement demands and reduce claims that survive summary judgment. The Court itself openly noted that the

decision should prevent employees who foresee that they are about to be terminated from making an unfounded discrimination claim – with plans to later bring a retaliation claim. In light of the 31,208 EEOC Title VII retaliation charges (of 99,412 total charges) brought in 2012, this is good news for employers.

**Contact Information.** For more information on this subject, please contact Douglas Towns (404.888.8852) or Jessica Gallegos (404.888.8849).

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