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Employers Receive Two Favorable Rulings from United States Supreme Court in Discrimination Cases

Client Advisories

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In two decisions released earlier this week, the Supreme Court of the United States set forth new, employer-friendly standards applicable to discrimination and retaliation claims by employees. These two cases heighten the level of evidence that employees will need to show before they can bring a successful claim to a jury in federal court. Although it remains to be seen whether these new rulings will be adopted in state courts, they do represent a significant shift in favor of employers in these often-troubling cases.

In the first case, Vance v. Ball State University, an employee sued the employer under federal law (Title VII of the Civil Rights Act), claiming she was subject to a hostile work environment due to her race. Under the law, a critical issue is whether the harasser is a supervisor or a co-worker. That is, an employer will be automatically liable for a hostile work environment created by a supervisor, if the employee suffers some tangible employment action, e.g., discipline or termination. And, even if there is no tangible employment action, the employer may still be liable unless (1) the employer exercised reasonable care to prevent any harassing behavior; and (2) the employee unreasonably failed to take advantage of the company procedures or policies designed to protect the employee. However, if the harasser is merely a co-worker, and not a supervisor, the employer is only liable if the employer was negligent in some way (i.e., it knew of or permitted the harassment to occur).

The Supreme Court in Vance answered the important question of "Who is a supervisor?" According to the Supreme Court, a supervisor must be "empowered by the employer" to take tangible employment actions, such as the power to fire, transfer, or discipline the employee, or at least strong input into those decisions. The Court rejected the position of the employee and the U.S. Equal Employment Opportunity Commission, who argued that a supervisor can be shown simply by having the ability to exercise significant direction over another's daily work. As a result, the employee in Vance had to show negligence by the employer in allowing the harassment, given that the harasser had no power to take any tangible employment action against her, although he regularly directed her work. This represents a significantly higher hurdle for employees, and reduces the pool of potential supervisors in the workplace, for the purposes of federal anti-discrimination laws.

In the second case, University of Texas Southwestern Medical Center v. Nassar, the Court addressed what an employee needs to prove in the exploding arena of retaliation claims. Retaliation claims by employees require no underlying discrimination, but instead involve some adverse treatment against the employee who complained about discrimination. Before this decision, an employee in a retaliation claim only needed to show that the retaliatory intent was a "motivating factor" in the employer's decision to discipline, terminate, etc. The employee could have still won his or her case even where other, non-discriminatory factors also motivated the action. However, the Court rejected that more liberal rule, and now requires retaliation-plaintiffs to show that the adverse action would not have taken place "but for" his opposition to discrimination. In other words, the employee must show that retaliation was the motivating factor in the employer's decision to take the wrongful action. Although such a nuance may be difficult for juries to distinguish, federal judges now will be more demanding before a retaliation case can ever get to a jury, based on this higher "but for" standard.

These decisions apply, for now, only in federal court and for federal discrimination claims. However, many State courts routinely follow federal law as guidance for interpreting state anti- discrimination laws. For the time being, particularly in New Jersey but less so in Pennsylvania and Delaware, the more employee-friendly State court cases - defining supervisors more broadly and requiring only a "motivating factor" in retaliation claims - remain the law. However, it is certainly anticipated that the individual State courts will in the near future decide if these Supreme Court decisions apply to State law claims as well.

If you have questions or concerns related to this ruling or other labor & employment matters, please contact a member of Archer's Labor and Employment Department in Haddonfield, N.J., at (856) 795-2121, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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