

## UNITED STATES SUPREME COURT ISSUES RULINGS ON EMPLOYMENT DISCRIMINATION CASES

On June 24, 2013, the U.S. Supreme Court announced decisions in two employment discrimination cases. The decisions in both cases will make it easier for employers to defend employment discrimination suits.

### **VICARIOUS LIABILITY—*MAYETTA VANCE V. BALL STATE UNIVERSITY***

Under Title VII of the federal Civil Rights Act of 1964, an employer's liability for the discriminatory actions of its employee depends on whether the employee was a supervisor to or a mere coworker of the plaintiff claiming discrimination. An employer is "vicariously liable" (legally responsible) for the actions of an employee who is in a supervisory position over a plaintiff, whether or not it knew of the supervisor's discriminatory conduct. In contrast, the employer must be shown to have been negligent in controlling work conditions in order to be held liable for the discriminatory action of a non-supervisory coworker. That requires a plaintiff to show that the employer knew or should have known about the coworker's harassment. This negligence standard is a higher hurdle for plaintiffs than vicarious liability.

In the *Vance* decision, the Court held that an employee is a supervisor for purposes of vicarious liability under Title VII only if he or she has the power to make tangible employment actions against the plaintiff (e.g., hiring, firing, demoting, promoting, transferring or disciplining). In prior cases, the Equal Employment Opportunity Commission (EEOC) had taken a position that was easier for plaintiffs to meet, i.e., that any employee that has the authority to exercise control over the plaintiff's daily work "supervised" the plaintiff. The Court's decision in *Vance* will hold plaintiffs to a higher standard and make it easier for employers to defend vicarious liability claims in federal court.

It is important to note that employers are still obligated by California law to continue to provide ongoing anti-harassment training to their supervisors and that the Court's decision in *Vance* does not impact the much broader definition of "supervisor" under California's Fair Employment and Housing Act (FEHA).

### **RETALIATION CLAIMS—*UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER V. NASSAR***

In another case interpreting Title VII, the Court raised the standard for proving unlawful retaliation claims. Under Title VII, it is illegal to fire, demote, harass, or otherwise "retaliate" against applicants or employees because they filed a charge of discrimination, because they complained to their employer about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).

In *Nassar*, the Court held that retaliation claims must be proved using a "but-for" standard. That is, the plaintiff must prove that the employer's adverse employment action would not have happened but for the retaliatory motive. Put another way, the defendant employer will not be liable for an action if he would have taken the same action for non-discriminatory reasons. Before the Court's decision in *Nassar*, an employee could sustain a retaliation case merely by showing that discrimination was one of the motivating factors for the adverse

employment action. This decision will make it more difficult for plaintiffs to win retaliation claims under Title VII. However, it is not likely to have an impact on state law retaliation claims under FEHA.

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