

CLIENT ADVISOR



U.S. Supreme Court Issues Two Important Employment Discrimination Decisions

A divided Supreme Court recently issued two decisions narrowing the standards for employer liability in discrimination cases brought under Title VII of the Civil Rights Act of 1964 (Title VII).

“Supervisor” Must Be Empowered To Take Tangible Employment Actions For Vicarious Liability

In Vance v. Ball State University, No. 11-556 (decided June 24, 2013), the Court held that an employee is a “supervisor” for purposes of vicarious liability under Title VII only if he or she “is empowered by the employer to take tangible employment actions against the victim.” “Tangible employment actions” include hiring, firing, promoting, demoting, transferring and disciplining. The Vance case arose out of a claim by a Ball State University (BSU) employee who alleged that a co-worker—who at times led or directed Vance’s work—had created a racially hostile environment. In an opinion issued by Justice Alito, the Court found that BSU was not vicariously liable since the co-worker had exercised only limited oversight and had not been empowered by BSU to take any tangible employment action against her. In so

ruling, the Court narrowed and clarified the definition of “supervisor” and rejected the EEOC’s broad definition.

Retaliation Claims Subject To “But For” Causation Standard

In University of Texas Southwestern Medical Center v. Nassar, No. 12-484 (decided June 24 2013), the Court held that Title VII retaliation claims must be proved according to the principles of “but for” causation and not the broader “motivating factor test.” In Nassar, the Court ruled in favor of an employer who had provided the reasonable explanation that it had refused to rehire Dr. Nassar because of a pre-existing policy, not—as Dr. Nassar alleged—in retaliation for his prior complaints of discrimination by a supervisor. The new “but for” standard requires proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action of the employer. The “motivating factor test” remains the standard for other Title VII status-based claims of discrimination.

It remains to be seen if the MCAD will endorse these narrower standards in its interpretation of M.G.L. c. 151B.

Carefully Review Agreements Before Signing

The U.S. District Court for the Southern District of New York recently held that a plaintiff employee who changed one word in a separation release before signing it was not barred from later bringing a discrimination suit against her former employer. Allen v. Chanel, Inc., 2013 WL 2413068 (2013). The court determined that by changing the word “including” to “excluding” before a list of claims in the “General Release of Claims” paragraph of the settlement agreement before signing and returning the agreement to her employer, the employee had evidenced “an intent to preserve her rights to file a discrimination claim.”



The employer failed to notice the change and paid the employee \$14,940 in severance as per the agreement. Five months later the employee filed a discrimination suit.

LESSON: Employers (or counsel) must carefully review all agreements prior to signing.

LOOKING FOR ADDITIONAL INFORMATION ON THE NEW BACKGROUND CHECK LAW?
VISIT THE EXECUTIVE OFFICE OF EDUCATION’S FREQUENTLY ASKED QUESTIONS PAGE

<http://www.mass.gov/edu/2013newsupdates/frequently-asked-questions-regarding-background-checks.html>

SCHOOL’S OUT

Summer is the perfect time to start preparing for the upcoming school year.

Summer School Checklist

- Review/revise policies
- Update school, student & teacher handbooks
- Identify and provide training for Team Chairs/SPED staff

In addition, districts should be planning how they will implement changes to the student discipline law, the new background check law and the new teacher evaluation requirements.



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