No Free Pass For Employers On Retaliation Claims

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With all the attention focused on the recent Supreme Court rulings on voting rights and same-sex marriage, it was easy to overlook another ruling arising from a Texas case that has significant implications for employers.

The case, University of Texas Southwestern Medical Center v. Nassar, revolved around complaints by Dr. Naiel Nassar that his supervisor at the university had harassed him and discriminated against him because of his Middle Eastern background, and that a job offer at an affiliated hospital, Dallas Parkland, was revoked because he had complained about the supervisor in a resignation letter to the university.

According to Nassar, his supervisor had made racial comments and had given his work unwarranted extra scrutiny , as compared to other doctors she supervised. The Parkland executive who had offered Nassar the hospital position learned about his resignation letter and withdrew the job offer. Nassar sued the university, alleging it had blocked the hospital from hiring him in retaliation for his complaints against his supervisor.

The Supreme Court ruled that, for an employee to prevail in an unlawful retaliation claim, the employee must establish that retaliatory motive was the reason for an adverse employment action – such as termination, demotion, pay cut or, in Nassar's case, the withdrawal of a job offer. That is, the adverse employment action would not have occurred in the absence of a retaliatory motive by the employer.

Retaliation claims are here to stay, they are now simply harder for an employee to prove. Employers must still document performance issues, prepare honest, objective and constructive performance evaluations, and consider how issues with similarly situated employees are addressed prior to taking any adverse employment action against an individual.

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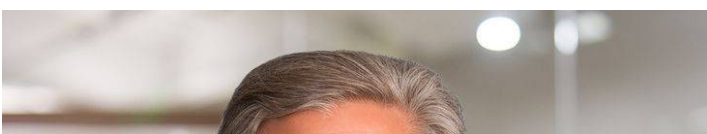
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