Supreme Court Issues New Rulings

The Supreme Court issued three rulings on Monday that only slightly change the legal landscape for higher education.

Fisher v. University of Texas at Austin

The Supreme Court recently issued its long awaited ruling on affirmative action in higher education. The Court ruled seven to one (with Justice Kagan abstaining) to remand the case to the Fifth Circuit finding that the lower court did not apply to proper standard of proof when evaluating the claims. Most importantly, the Court did NOT rule that affirmative action was inherently unconstitutional, as many had feared. Instead, the Court primarily reaffirmed its 2003 holding in Grutter v. Bollinger, which has been the law of the land for the last ten years. The Court emphasized that affirmative action programs are subject to “strict scrutiny.” While this does not change the legal standard, it may embolden those challenging these policies or may prompt reconsideration of their use in some higher education institutions. Thus, the decision may provide political fodder to some, but it should not significantly alter the legal standards applicable in affirmative action cases.

University of Texas Southwestern Medical Center v. Nassar and Vance v. Ball State University

The Court also issued two decisions favoring employers in cases raising discrimination and retaliation claims under Title VII, the primary national anti-discrimination law.

In University of Texas Southwestern Medical Center v. Nassar, the Supreme Court limited the standard of proof in retaliation cases to the narrower “but for” causation standard, as opposed to the “mixed motive” standard, in Title VII retaliation cases. This five to four ruling, vacating the Fifth Circuit’s prior decision, benefits employers. This is a relatively modest change in the burden of proof in such cases. In addition, the Court did not accept the invitation from some employer amicus organizations to find that all similarly worded statutes would be interpreted in the same fashion. Such a ruling would have constituted a major change for legal claims under other statutes, such as the NLRA or the FLSA.

In Vance v. Ball State, the Supreme Court addressed a claim of harassment brought by a cafeteria worker against another employee. Generally, an employer is accountable under Title VII when one of its supervisors harasses an employee. The issue in Vance was whether the employee engaging in the harassment was a supervisor or a co-worker. In the latter instance, the employer would be liable only if it was negligent in failing to prevent the harassment. In Vance, the Court adopted a relatively narrow definition of supervisor, finding that that because the alleged harasser did not have the power to make certain formal employment decisions, such as hiring, firing, or promoting, she was not a “supervisor” under Title VII, even though she did direct Ms. Vance’s day-to-day activities. Notably the Court’s narrow
definition does not apply when there is a tangible employment action such as a termination or a demotion.

Overall, these were victories for the employers and will cause some discrimination and retaliation claims to fail.