

Back To School: Time To Focus On Takeaways From Supreme Court Flurry

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The end of the U.S. Supreme Court term in June included an extraordinary number of important decisions, in employment law and otherwise. Sometimes it is hard to take it all in as the new stories and alerts fly, so we thought it was a good idea now that the dust has settled to review the three key employment cases and their implications. If you missed our webinar on the topic last week a quick summary follows. Tina Syring-Petrocchi began by reviewing *Vance v. Ball State University* and who is a supervisor under Title VII. The significance of this determination is that the employer can be held liable for a supervisor's actions more easily than if the individual is a mere coworker. The court found for the employer and set forth the standard that a supervisor is one who is has power to take tangible employment actions against the alleged victim. Tina stressed the importance of thinking through in advance who is a supervisor, and structuring relationships and responsibilities accordingly. Job descriptions are an important part of this process. She also reminded us to be mindful of different definitions under state discrimination laws in your respective state. Finally, she emphasized the importance of harassment training and proper sponsors to complaints, which benefited the employer in this case. Next, Jerry Lutkus spoke about the *Windsor* decision and the defense of marriage act (DOMA) and what it means for employers. While there are many unanswered questions still, a few things are clear. One, same-sex marriages are legal again in California, making a total of 13 states. Two, recently the Department of Labor has made clear that same sex couples are entitled to FMLA leave. Three, other benefits available under federal law may now be available to same-sex couples in areas such as 125 plans. Finally, Jerry emphasized that employers should touch base with benefits counsel about implications for their particular benefit plans. I concluded the festivities addressing *University of Texas S.W. Medical Center v. Nassar*, seemingly long-awaited good news in the area of retaliation claims. The court's specific holding in the case was to adopt a higher "but for" standard of proof rather than the more forgiving "a motivating factor" standard. There is no concrete short-term take away for employers from this decision, but it seems likely to tilt the balance in the employer's direction in these claims. While this decision is good news for employers, I encouraged attendees to use it as an opportunity to emphasize the long-term increase in retaliation claims -and the importance of training managers in the basic practices that can literally win or lose these cases. These cases make 2013 an unusually busy year for employment law at the court. While the news was on balance

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positive, as always employers have work to do to minimize liability going forward in light of the guidance.