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Labor and Employment Law

But For Standard Applied to ADA Retaliation Claims

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In a case of first impression, the U.S. District Court for Connecticut applied the "but-for" causation standard to ADA retaliation claims. *Saviano v. Town of Westport*, Case No. 3:04-CV-522(RNC) (D. Conn. Sept. 30, 2011). This is the first case following the U.S. Supreme Court's ruling in *Gross v. FBL Financial Services, Inc.* where the Connecticut District Court was asked to determine if the *Gross* "but-for" holding applied to ADA retaliation cases. It answered in the affirmative.

Prior to the decision there was some doubt whether the *Gross* ADEA "but-for" standard, or the Title VII "motivating factor" standard applied to ADA retaliation cases. As the ADEA's anti-discrimination section and the ADA's retaliation provision both use the word "because," the court concluded the same "but-for" standard applied. Specifically, the ADA retaliation section states no employer shall "discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter, or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter."

The significance of the case is that employees will now have a more difficult time proving ADA retaliation claims. They will now have to show that the retaliation was specifically and solely due to their protected activity; not just that their protected activity was a motivating factor along with other permissible reasons for the employer's decision.

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