

University of Texas v. Southwestern Medical Center v. Nassar, 133 S. Ct 2517 (2013). Term “but for,” while not meaning “sole cause,” precludes a mixed motives analysis in reprisal cases. *See* footnote to Complainant v. OPM and SSA, EEOC No. 0120123038, 0120120901 (Dec. 2, 2013), the Commission has suggested that it would apply the same approach to Title VII reprisal cases following *Nasser* as in ADEA cases as in *Gross v. FLB Financial Services*, in which the EEOC held that *Gross* does not preclude mixed motive analysis in age discrimination cases in the Federal Sector. *Gablirsch-Erickson v. USPS*, EEOC No. 0120110390

Vance v. Ball State Univ., 133 S. Ct 2434 (2013). For discrimination liability purposes, an employee is a supervisor when employer authorizes the employee to take a tangible employment action against employees.

Race Cases: Noose, Confederate Flag Cases: 2 AJ cases

Juergensen v. Commerce, EEOC Appeal No. 0120101504. EEOC remanded case for a hearing holding that rehiring a former employee who hung a noose in the workplace should have been considered by AJ as to whether this created a hostile environment.

Complainant v. USPS, 0120132144 (Nov. 1, 2013). AJ reversed when OFO found a basis for imputing liability onto the agency when it did not effectively address an employee’s objection to a co-worker who came to work wearing a confederate flag on his T-shirt. Manger told employees only to wear “appropriate clothing” without specifying that a confederate flag was inappropriate attire.

Sexual Stereotyping

Couch v. Dept. of Energy, EEOC No. 0120131136 (Aug. 14, 2013), Harassment found based on perceived sexual stereotyping when CP complained about harassment based on perceived sexual orientation when co-workers called him “fag,” “faggot” and “gay.” Supervisor told co-workers that Complainant is taking notes and that Complainant was going to file an EEO complaint against people. Subsequently, co-workers began to use the same derogatory terms toward Complainant. Co-workers called him a “rat fag” and “God loves rat fags too.” Commission found that it had jurisdiction over CP EEO complaint based on perceived sexual orientation based on highly charged offensive derogatory language and that Complainant was subject to sexual stereotyping and stated a claim of gender discrimination and subsequent reprisal workers referred to Complainant as a rat along with other derogatory sexual references. The agency was liable for ignoring Complainant’s repeated requests to the agency for the harassment to stop.

Jennings v. Dept. of Labor, EEOC No. 0120112716 (Feb. 25, 2013). No allegation of sexual stereotyping when Complainant given negative employment reference and Complainant alleged that he was discriminated against on the basis of sexual orientation.

Complainant did not state a claim under Title VII for gender discrimination but could move forward under a reprisal disparate allegation.

More Per Se Violation

Beckham v. Treasury, EEOC No. 0120112323 (May 22, 2013). Manager's statement that she would have to document what she said in meetings that "might result in trust concerns" and that Complainant's decision to file a reprisal complaint made her "sad" chilled Complainant from engaging in the EEO process. Manager's later apology did not militate against a reprisal finding.

King v. International Boundary and Water Commission, EEOC No. 0120112384 (March 2013). Credible testimony that supervisor told several employees about Complainant's EEO activity and that they should stay away from Complainant found to be retaliatory.

Gordon v. Army, EEOC No. 0720120040 (2013). Forcing Complainant to take annual leave to file EEO complaint deters engagement in EEO activity.

Complainant v. USPS, 0120132266 (October 30, 2013). Agency retaliated against Complainant after its attorney sent a letter threatening legal action after Complainant notified Postmaster that he intended to file an EEO complaint. Letter served to deter future EEO activity.