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Supreme Court Holds That Causation Standards Apply at the Pleadings Stage for Discrimination Claims

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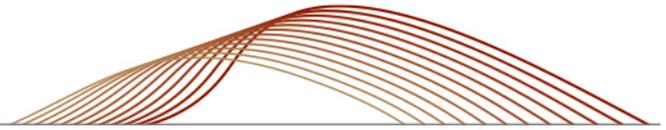
The common law “but for” causation standard applies to many statutory discrimination claims. For some time, there has been disagreement among federal courts over how district courts should apply that standard at pre-trial stages of a case. Last week, the U.S. Supreme Court provided guidance on this question. In [Comcast Corporation v. National Association of African American-Owned Media, No. 18-1171, 589 U.S. \(2020\)](#), the unanimous Court rejected the argument that the district court should apply a lower standard of causation to a Section 1981 discrimination claim on a motion to dismiss under Rule 12 of the Federal Rules of Civil Procedure.

Background

Comcast involved a dispute between two media companies. Entertainment Studios Network (ESN) claimed that Comcast intentionally discriminated against ESN, in violation of Section 1981 of the Civil Rights Act of 1866, by refusing to broadcast ESN’s programming. After twice allowing ESN to amend its complaint, the district court dismissed the case. Applying the *Twombly/Iqbal* standard, it held that the complaint failed to plead facts plausibly showing that Comcast would have broadcast the plaintiff’s television networks “but for” discriminatory animus.

The Ninth Circuit reversed the district court’s opinion, holding that the case could survive the motion to dismiss as long as the complaint contained factual allegations showing that discriminatory animus played “some role” in Comcast’s decision-making. On a *writ of certiorari*, the Supreme Court reversed.

The Court reaffirmed the principle that the “simple ‘but for’ common law causation test . . . supplies the ‘default’ or ‘background’ rule against which Congress is normally presumed to have legislated when creating its own new causes of action.” It pointed to *University of Tex. Southwestern Medical Center v. Nassar*, where the Court held that the “but for” standard applies to retaliation claims under Title VII, and *Gross v. FBL Financial Services, Inc.*, where the Court held that it applies to ADEA claims. The Court reviewed the history of the post-Civil War statute, as well as the evolution of the “motivating factor” standard specifically available under Title VII, and concluded that there was no reason to apply a standard other than “but for” causation to Section 1981 claims.



To avoid all of this, ESN urged the Court to adopt the burden-shifting framework of *McDonnell Douglas Corp. v. Green* for the evaluation of Section 1981 claims at the pleadings stage. The Supreme Court said no for two reasons. First, the *McDonnell Douglas* framework “is a product of Title VII practice.” Second, that analytical framework cannot change the essential elements of a claim, including causation. Although the Court did not foreclose the possibility that a similar tool may have some utility outside the Title VII context, it noted that the *McDonnell Douglas* decision itself is silent about causation. Therefore, the Court explained, “*McDonnell Douglas* can provide no basis for allowing a complaint to survive a motion to dismiss when it fails to allege essential elements of a plaintiff’s claim.”

Takeaway

Comcast creates greater opportunities for employers to challenge, at the pleadings stage, discrimination claims requiring proof of “but for” causation. Moreover, it gives greater force to arguments on summary judgment that the *McDonnell Douglas* framework does not relieve plaintiffs of their burden to demonstrate that there are genuine issues of material fact as to causation.



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