

U.S. Supreme Court Defines “Supervisor” for Title VII Discriminatory Harassment Claims

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On June 24, 2013, the U.S. Supreme Court handed down its decision in *Vance v. Ball State University*, a case closely watched by employers and employment lawyers. The case is about the appropriate standard of liability applied against employers in discrimination claims under Title VII of the Civil Rights Act of 1964 based on the alleged harassing conduct of an employee. The Supreme Court’s 5-to-4 decision may prove favorable to employers. Under Title VII, employers are subjected to separate standards of liability for harassment claims depending on the supervisory status of the alleged wrongdoer. As recounted by the Supreme Court in *Vance*, an employer is liable for the harassing conduct of the victim’s co-worker, i.e., a nonsupervisor, if the employer acted negligently in controlling working conditions.

However, where the harasser is a “supervisor,” the negligence standard is not applicable. If the harasser is a supervisor and the harassment results in a tangible employment action, then the employer is vicariously liable for the harasser’s conduct. In other words, the employer is strictly liable for the acts of its supervisor. If, on the other hand, no tangible employment action results, then the employer can avoid liability by showing (1) the employer exercised reasonable care to prevent and correct any harassing behavior and (2) the plaintiff unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer.

Thus, the standard for imposing liability on an employer for the alleged harassing conduct of its employee is higher when that employee holds a nonsupervisory role. Until *Vance*, Courts of Appeal disagreed as to the scope the “supervisor” status.

The *Vance* plaintiff, an employee in Ball State’s catering division, claimed she had been subjected to a hostile work environment based on her race, African-American, in violation of Title VII. Her allegations of harassment centered around the conduct of a Caucasian employee in the division, for which the plaintiff claimed Ball State was vicariously liable based on her status as the plaintiff’s supervisor. The parties ultimately agreed the other employee did not have the authority to hire, fire, demote, promote, transfer or discipline the plaintiff, i.e., she lacked the authority to take tangible employment actions against the plaintiff. However, the other employee’s job description indicated she led and directed certain other employees and she occasionally engaged in assignment of the plaintiff’s daily work tasks.

Under those general facts, the Southern District of Indiana granted Ball State’s motion for summary judgment, holding (1) the other employee was not the plaintiff’s supervisor given the lack of authority to take tangible employment action against her and (2) the plaintiff failed to show Ball State had been negligent – it responded to incidents of alleged

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harassment of which it was reasonably aware. On appeal, the Seventh Circuit affirmed, reinforcing the notion that a “supervisor” under Title VII is one who can take tangible employment action against the alleged victim of harassment.

Ultimately, the Supreme Court agreed with both lower courts, finding the other employee was not a “supervisor” for purposes of Title VII vicarious liability. The Supreme Court held that an employee is a “supervisor” only if the employee is empowered to take tangible employment actions against the harassment victim. In so holding, the Supreme Court rejected the notion that “supervisor” status is tied to the mere ability to exercise significant direction over another’s daily work. The Supreme Court recognized that the “tangible employment action” test for supervisory status is more readily applied, and will often be resolvable as a matter of law before trial.

What This Means to You

The Supreme Court’s decision in *Vance* may prove advantageous for employers in Title VII harassment cases and possibly harassment cases under other federal anti-discrimination laws. The Supreme Court’s decision both (1) provides a simplified analysis of “supervisor” status and (2) limits the class of employees who may be considered supervisors and whose conduct could subject an employer to vicarious liability. The negligence standard of liability for nonsupervisor harassment is more difficult for a plaintiff to establish, whether that be at the administrative level, at the summary judgment stage, or at trial. The *Vance* decision and broader applicability of the negligence standard also underscore the importance of having anti-harassment training for all employees, robust policies and procedures regarding anti-harassment, and prompt and effective remedial action in response to harassment concerns, each of which may be critical elements of a defense under the negligence standard.

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