

Who is a Supervisor? SCOTUS Decides *Vance v. Ball State University*

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On June 24, 2013, the U.S. Supreme Court determined that, for purposes of Title VII vicarious liability, the definition of “supervisor” is limited to an employee who is empowered to take tangible employment actions against the victim of harassment. Tangible employment actions include: hiring, firing, demoting, promoting, reassigning and making decisions causing significant changes in an employee’s economic benefits. Tangible employment actions do not include simply scheduling, assigning or directing the work of others.

Background

Vance, an African-American female, worked as a catering assistant for Ball State University. She alleged that Davis, a Caucasian female catering department employee, subjected her to a racially hostile environment. Vance brought claims against Ball State alleging the University was vicariously liable for Davis’ actions because she was a supervisor. There was some evidence that Davis “led or directed” Vance and other employees in the kitchen; however, there was no dispute that Davis did not have the authority to hire, fire, promote, demote or discipline Vance. In finding that Davis was not a supervisor, the Supreme Court rejected the broad definition of supervisor advocated by Vance and previously articulated by the EEOC.

What is the Legal Significance of the Decision?

According to Supreme Court precedent, an employer is strictly liable for the actions of a supervisor when the supervisor’s harassment results in a tangible employment action. If a supervisor’s harassing conduct does not result in a tangible employment action, then an employer is still liable for the harassment by a supervisor unless the employer proves: 1) the employer exercised reasonable care to prevent and correct the harassing conduct; and 2) the harassed employee unreasonably failed to take advantage of corrective or preventative measures provided by the employer. In contrast, if a co-worker is the alleged harasser, a plaintiff must prove that the employer knew or should have known of the harassment and failed to take reasonable steps to address the harassment. Therefore, whether the alleged harasser is a supervisor or non-supervisor will have a significant impact on the manner in which a harassment case is litigated as well as the outcome.

What is the Practical Impact of This Ruling for Employers?

First, employers receive some clarity. The EEOC’s broad definition of supervisor included individuals who exercised “significant discretion over another’s daily work.” Deciphering supervisory status under this definition required “a multi-factored analysis” and was determined on a “case-by-case basis” — terms often used by attorneys that give little comfort to employers. The

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Supreme Court characterized the EEOC's definition as "nebulous" and "a study in ambiguity" resulting in increased litigation. After *Vance*, simply directing the work of others, without more, will not result in vicarious employer liability under Title VII.

Second, the decision will narrow the issues in these types of cases, promoting early resolution or resulting in summary judgment. In fact, the Supreme Court indicated that under the *Vance* definition, supervisory status generally can now be determined very early on in the litigation process by simply reviewing written documentation or engaging in minimal discovery.

Third, after *Vance*, employers will have a better chance of favorably resolving or ultimately winning many cases where a team lead, crew leader or foreman is accused of harassment and the employer either is unaware of the alleged harassment or takes reasonable steps to address the harassment. In these types of cases, the burden of proof now falls on the plaintiff to demonstrate the employer knew or should have known of the harassment and failed to take steps to correct the problem.

Applying *Vance* in Ohio

Under Ohio law, in contrast to analogous federal law, supervisors may be held individually liable for discrimination and harassment. Frequently supervisors are individually named by plaintiffs' attorneys to put pressure on the employer to settle the case or defeat an employer's efforts to remove the case to federal court. It remains to be seen whether *Vance* will assist employers (and supervisors) in reducing individual supervisor liability claims. Several groups, including the Ohio Chamber, have advocated eliminating the personal liability of supervisors in Ohio through proposed amendments to Ohio's discrimination laws.

Employer Action Steps

The Supreme Court's ruling provides some valuable insights that employers can put into action.

- **Review and revise job descriptions.** Determine which employees have the authority to take tangible employment actions, document those decisions in written job descriptions and communicate that fact to the employee.
- **Review anti-harassment and anti-discrimination policies and procedures.** Written anti-harassment, anti-discrimination and equal employment opportunity policies and related procedures are a prerequisite to defending any harassment or discrimination claim.
- **Train the supervisors.** After confirming which employees have the authority to take tangible employment actions, and consequently create legal liability for an employer, those supervisors must have periodic equal employment opportunity and anti-harassment training.

Employers who take these steps go a long way toward reducing potential liability under Title VII and analogous Ohio law.

Should you have any questions regarding supervisory status, please contact [James B. Yates](#), [Sarah E. Pawlicki](#) or visit our web site www.eastmansmith.com.

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