

EMPLOYMENT SERVICES ALERT

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The United States Supreme Court Narrowly Defines “Supervisor” in Workplace Harassment Claims

This week, the United States Supreme Court clarified the definition of who is a “supervisor” when determining whether an employer is liable for an employee’s alleged wrongful harassment of another employee. In a 5-4 decision in *Vance v. Ball State University*, Justice Samuel Alito delivered the Court’s decision in holding that a “supervisor” is one who can “take tangible employment actions” regarding other employees. Examples of these types of actions include “hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”

In this case, Vance, the Plaintiff/Petitioner, was an African-American caterer at Defendant/Respondent Ball State University. Vance alleged that Davis, a Caucasian employee in the Ball State catering department, racially harassed her. What was clear in the record was that Davis did not have the power to hire, fire, demote, promote, transfer, or formally discipline Vance. The trial court granted Ball State summary judgment in holding that Davis was not a “supervisor,” and therefore a heightened standard regarding an employers’ liability for this alleged harassment did not apply. Instead, a negligence standard was applied to Ball State in determining whether it should be liable when a non-supervisor allegedly harassed another employee based on that employee’s membership in a protected class. Because the trial court held that Ball State reasonably responded to all instances of alleged harassment that it should have reasonably been aware of, it fulfilled its duties under this lesser liability standard and was granted summary judgment. The Seventh Circuit affirmed, which decision the Supreme Court upheld here.

In this holding, the Supreme Court specifically rejected the Equal Employment Opportunity Commission’s (EEOC) definition of a “supervisor” as someone who has the ability to exercise significant discretion over another employee’s daily work. The Court held that this definition was not specific enough, and it would be very difficult if not impossible to determine prior to trial whether an individual was a supervisor under this definition. The Court reasoned that a jury would often have to decide whether an individual exercised enough power over another’s daily tasks to be classified as a “supervisor.” Under the *Vance* decision, courts will hopefully be able to determine with more certainty prior to trial whether an individual had hiring, firing, promoting, etc. power. Accordingly, courts should better be able to make appropriate legal decisions (such as whether to grant summary judgment) based on an easier determination of how the law should apply to an employer’s liability for one of its employee’s alleged harassment.

Whether an employee is a “supervisor” is important in determining whether the employer will be liable for his or her actions. This case reaffirmed the law that an employer is strictly liable for a supervisor’s harassment if it results in a tangible employment action. For example, if a male supervisor demotes a female employee because that female refuses to go on a date with him (harassment based on gender), then the employer is strictly liable for this harassing conduct. If the alleged harassment by the supervisor does not result in a tangible employment action (such as inappropriate comments based on the employee’s membership in a protected class), then the employer is liable only if it failed to exercise reasonable care to prevent and/or correct this harassing behavior, **and** the employee unreasonably failed to take advantage of the preventative or corrective opportunities provided by the employer.

On the other hand, an employer will be liable for a non-supervisor’s harassment of a fellow employee only if the employer knew or should have known of the harassing conduct, but failed to take immediate and

appropriate action. The *Vance* decision described this standard generally as a “negligence” standard, and it is clearly less stringent than either standard applied to liability for a supervisor’s conduct.

Employers can take away a number of pieces of advice from the Court’s decision in the *Vance* case. First, although it is important to inform all employees of the absolute prohibition of workplace harassment, it is especially important to properly and extensively train employees who have the ability to hire, fire, or promote others because they will be held to a heightened standard. Also, it will be important to clearly and accurately define and describe who does and does not have the ability to hire, fire, or promote. Lastly, the *Vance* decision should make it easier for employers and their counsel to assess what standard will apply to employees who are accused of harassment in the workplace, which could encourage quicker resolutions, in or out of court, to these accusations.

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