

Publications

Labor and Employment Alert: U.S. Supreme Court Favors Narrow, but Workable Definition of "Supervisor" for Title VII Hostile Work Environment Claims

Related Services

Labor and Employment

CLIENT ALERT | 6.25.2013

The U.S. Supreme Court has limited who is deemed a "supervisor" for purposes of Title VII hostile work environment claims, holding that the individual must have been empowered to take tangible employment action against the party claiming harassment.

In *Vance v. Ball State University*, Plaintiff Maetta Vance was employed by Ball State University as a catering assistant in the university's Dining Services department. Vance claimed that another employee, catering specialist Sandra Davis, subjected her to harassment and discrimination on the basis of her race. Though the parties disagreed over Davis' exact duties, it was undisputed that Davis did not have the power to take "tangible employment actions" against Vance – *i.e.*, hiring, firing, promoting, transferring or disciplining. Nonetheless, Vance claimed that Davis was her supervisor, and the university was liable for Davis' creation of a racially hostile work environment.

In *Vance*, as in other Title VII hostile work environment cases, whether Davis was considered Vance's "supervisor" was critical to whether the university was liable for Davis' actions. If Davis was deemed Vance's "co-worker," the university would be liable only if Vance could prove that the university was negligent in controlling her working conditions. If Davis was considered Vance's "supervisor," however, different rules would apply. Namely, the university would be strictly liable if Vance could show that the harassment culminated in a tangible employment action, like termination. Even if the harassment did not end in tangible employment action, the university could escape liability only if it demonstrated that: (1) it exercised reasonable care to prevent and correct harassing behavior, and (2) Vance unreasonably failed to take advantage of these preventative or corrective measures.

Over the past decade, a split had developed among U.S. Courts of Appeals on this issue. Some Circuits defined a supervisor to include only those who had the authority take tangible employment action against the party claiming harassment. Other Circuits, using the more flexible standard supported by the Equal Employment Opportunity

Commission (EEOC), also examined whether the individual could recommend tangible employment action or direct the daily work of the party claiming harassment.

In its opinion, the U.S. Supreme Court opted for the narrower definition, holding that the term "supervisor" includes only those employees empowered by the employer to take tangible employment actions against the party claiming harassment, such as hiring, firing, promoting, reassigning with significantly different responsibilities, etc.

The Court found support for this definition in its prior decisions, *Ellerth* and *Faragher*, where the original distinction between supervisors and co-workers was drawn. As opposed to the standard espoused by the EEOC, the Court reasoned that its definition would make it easier to determine who was a supervisor. As a result, parties could better assess the strength of their case, and fewer jurors would be tasked with determining whether an alleged harasser was a supervisor or merely a co-worker.

Though the consequences of the Court's decision remain to be seen, *Vance's* narrower definition will serve to exclude more employees from being deemed "supervisors" under the law. Should those employees become the subject of a Title VII hostile work environment claim, potential plaintiffs will face additional obstacles if they wish to impute liability to their employer.

For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys labor and employment group by calling 614.464.6400.