

PUBLICATION

Supreme Court Ruling Defines "Supervisor" and Gives Clarity, Peace of Mind to Employers

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Last month the U.S. Supreme Court adopted a bright-line standard for determining which employees qualify as supervisors in harassment lawsuits filed under Title VII of the 1964 Civil Rights Act, thus resolving a split in the Circuit courts and rejecting the Equal Employment Opportunity Commission's guidance. In *Vance v. Ball State University*, the majority, through Justice Samuel Alito, held that an employee is a "supervisor" for the purposes of liability under Title VII only if he/she is empowered by the employer to take tangible employment actions against the alleged victim.

The Circuit Courts were previously split on who qualified as a "supervisor," with the Second, Fourth and Ninth Circuits agreeing with the EEOC's guidance, which holds that employers are liable for actions of their "supervisors" when those employees had the authority to direct and oversee the alleged victim's daily work. The First, Seventh and Eighth Circuits, however, adopted a stricter standard which limited an employer's liability to acts committed by supervisors with the authority to "hire, fire, demote, promote, transfer or discipline" the alleged victim.

Affirming the Seventh Circuit in *Vance*, the Court held "an employer may be vicariously liable for an employee's unlawful harassment only when the employer has empowered that employee to take tangible employment actions against the victim, i.e., to effect a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities or a decision causing a significant change in benefits."

The new standard requires more than the standard promoted by the EEOC, which the majority's opinion explicitly rejected, referring to it as "a study in ambiguity." To explain its reasoning in adopting the higher standard, the Court relied on the *Faragher/Ellerth* framework for vicarious employer liability. Under that framework, if the supervisor's harassment culminates in a tangible employment action, the employer is vicariously liable; but if no tangible employment action is taken, the employer may escape liability by establishing that it exercised reasonable care to prevent and correct any harassing behavior and that the employee unreasonably failed to take advantage of those preventive or corrective opportunities. In *Vance*, the Court reasoned that the standard applied in *Faragher/Ellerth* draws a sharp line between coworkers and supervisors, noting that the alleged harassers in those cases had authority to make tangible employment decisions affecting the victims, and the term "supervisor" is, therefore, to be read under this more narrow definition.

The *Vance* opinion is considered a significant win for employers because it gives clarity on the issue of when an employer could be subject to greater liability. This decision will make it easier for employers to establish early in litigation that an employee was not a supervisor, thereby reducing the cost associated with defending against harassment claims. Finally, it is also a reminder to employers to review their job descriptions and the responsibilities of their employees, and make sure that those employees who qualify as "supervisors" have been properly trained and educated to avoid the potential risks under Title VII.

For questions about these or any employment-related issue, please reach out to any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.