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The Supreme Court Defines the Term “Supervisor” Under Title VII

On June 24, 2013, the U.S. Supreme Court issued its decision in *Vance v. Ball State University*, which addressed the issue of who is a “supervisor” under Title VII of the Civil Rights Act. Under Title VII, an employer can be held liable for harassment perpetrated by a non-supervisory employee only if it was negligent in controlling working conditions. If the harassment is perpetrated by a “supervisor,” and the harassment results in a tangible adverse employment action, the employer is strictly liable. If the harassment is perpetrated by a “supervisor,” but no tangible adverse employment action is taken, the employer can avoid liability by establishing that it exercised reasonable care to prevent and correct harassing conduct and that the plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities that were provided.

In a 5-4 majority opinion authored by Justice Alito, the Supreme Court affirmed a decision rendered by the Seventh Circuit Court of Appeals granting summary judgment to Ball State University in a claim filed by an employee alleging that a co-worker had created a racially hostile work environment. Both the District Court and the Seventh Circuit had held that the co-worker was not a supervisor because she lacked the authority to hire, fire, demote, promote, transfer, or discipline the plaintiff. Accordingly, the District Court and the Seventh Circuit analyzed the case under the standards for non-supervisory harassment under Title VII, and determined that Ball State University could not be held liable, because it was not negligent with respect to the alleged conduct by the plaintiff’s co-worker.

The Supreme Court specifically held that “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 Supreme Court also held that the “ability to direct another employee’s tasks is simply not sufficient” to establish an employee as a supervisor for purposes of Title VII liability. According to the Supreme Court, what makes a person a supervisor is the ability to function as an agent of the employer “to make economic decisions affecting other employees under his or her control.”



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The Supreme Court majority explicitly rejected the definition of “supervisor” set forth by the Equal Employment Opportunity Commission (“EEOC”) in its Enforcement Guidance, finding that definition to be “a study in ambiguity.” The EEOC’s Enforcement Guidance provides that an employee, in order to be classified as a supervisor, must have a level of authority “of sufficient magnitude so as to assist the harasser explicitly or implicitly in carrying out the harassment.” The Supreme Court majority declared that it was adopting a more workable standard that could be more easily applied, so that parties would know early in the litigation which employees will be considered “supervisors” under Title VII.

The Supreme Court’s decision significantly curtails the universe of employees whose actions may be imputed to employers for purposes of Title VII liability. This decision will certainly have a profound effect on Title VII litigation in the future.

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