

SUPREME COURT ADOPTS NARROW DEFINITION OF “SUPERVISOR” IN CONTEXT OF WORKPLACE HARASSMENT CASES

On June 24, 2013 the Supreme Court of the United States issued a decision in *Vance v. Ball State University*, in which it defined narrowly what it means to be a “supervisor” in the context of workplace harassment claims. The Court’s decision in *Vance* has been a long time coming and offers long-awaited guidance to employers as to who constitutes a “supervisor” for purposes of imposing strict liability under Title VII for workplace harassment.

Whether an employee is considered a “supervisor” for purposes of Title VII is of critical importance because an employer’s exposure to liability is significantly different depending on whether that employee is a “supervisor” or simply a co-worker. An employer is liable for harassment by a co-worker only if the employer was negligent in controlling working conditions. Different rules apply, however, where the alleged harasser is a “supervisor.” In those situations, an employer may be strictly or automatically liable for the supervisor’s creation of a hostile work environment where the supervisor’s alleged harassment results in a tangible employment action such as hiring, firing, or failure to promote. Where the harassing conduct is committed by a “supervisor,” an employer can only avoid liability in the absence of a tangible employment action if: (1) the employer exercised reasonable care to prevent and correct the harassing conduct (*i.e.*, having a written anti-harassment policy, conducting regular supervisory training, *etc.*); and (2) the employee failed to take advantage of the employer’s preventive and corrective measures available to the employee. So, whether an alleged harasser is a “supervisor” or merely a co-worker is important.

In *Vance v. Ball State University*, the Supreme Court defined “supervisor” narrowly to mean only those individuals who have authority to take tangible employment actions including 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. In adopting this narrow definition of supervisor, the Court rejected the EEOC’s attempt to broaden the definition of “supervisor.” The EEOC attempted to argue that individuals who simply direct the work of another employee should be sufficient to cast the title of “supervisor” upon an individual for the purpose of imposing strict vicarious liability upon the employer, which would include anyone who directs another employee’s work tasks.

The Supreme Court's adoption of the more narrow definition of "supervisor" means that not every employee with the authority to direct work will be considered a supervisor for the purpose of imposing strict liability upon an employer for workplace harassment. The Court's holding may result in employers facing less strict liability harassment claims in the future and at the same time provide employers a better opportunity to defend themselves against such claims under the less stringent negligence theory of liability.

What Steps Should You Take to Protect Your Business in Light of the Vance Decision?

Be sure to review and update your anti-harassment policies and procedures and communicate those policies and procedures to your employees. You should always be sure to act quickly in conducting a thorough investigation of any complaint or allegation of harassment by one of your employees and take appropriate corrective or disciplinary actions as necessary.

Also, clearly establishing the status of each of your employees will continue to be of critical importance. You should create or review and clarify job descriptions for those employees who you intend to have authority to take tangible employment actions.

Please contact Sarah Matt for more information or to provide you advice regarding your anti-harassment policies and procedures and employee job descriptions.