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LEGAL ALERT

Supreme Court Confirms The Definition Of “Supervisor” Under Title VII

On June 24, 2013, the U.S. Supreme Court held that, for purposes of employer liability for harassment under Title VII, a supervisor is defined as someone who can undertake or effectively recommend tangible employment decisions affecting the victim, in other words, someone who can make 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.” *Vance v. Ball State University*.

This definition resolves a split among the courts of appeal regarding the definition of “supervisor,” and, in many jurisdictions, narrows the scope of an employer’s vicarious liability for workplace harassment under Title VII of the Civil Rights Act.

Background

Under Title VII, when a “supervisor” subjects a subordinate employee to a hostile work environment that results in a tangible employment action (e.g., demotion, termination, or a “constructive discharge”), the employer will be held strictly and vicariously liable for the supervisor’s conduct. On the other hand, if the harassment is perpetrated by a non-supervisor, such as a coworker, the employer will only be liable where it was negligent in discovering or remedying the harassment. Two Supreme Court decisions in 1998 established these touchstones for employer liability, but did not define the term “supervisor.”

Since those 1998 decisions, the courts of appeals have developed different tests to determine who is a “supervisor” for purposes of Title VII liability: The U.S. Courts of Appeals for the 1st, 7th, and 8th Circuits have held that the harasser must have the power to take tangible employment actions (e.g., fire, demote, transfer or discipline) against the victim in order to be considered a supervisor, while the 2nd, 4th, and 9th Circuits have held that the alleged harasser need only have the more general authority to direct and oversee the victim’s daily work in order to be considered a supervisor.

How The Case Arose

Maetta Vance worked in food service for Ball State University. Her employment was marked by a series of conflicts with other Ball State employees whom Vance alleged engaged in offensive conduct which included the use of racial slurs and veiled threats of physical violence and



intimidation. Vance filed internal complaints about the offensive conduct, which Ball State immediately and thoroughly investigated. Nevertheless, Vance was dissatisfied with Ball State’s resolution of the complaints. She filed an EEOC charge, and eventually a lawsuit, alleging that three supervisors subjected her to race-based hostile-work-environment harassment.

The district court found that the conduct attributable to two of Vance’s supervisors failed to rise to the level of actionable harassment as a matter of law. The court also ruled that the third perpetrator, Sandra Davis, was actually not Vance’s supervisor, but instead was merely her coworker. The trial court reached this conclusion by applying the 7th Circuit’s definition of “supervisor.”

Based on the 7th Circuit’s definition, the court found that Davis had no power to take tangible employment actions against Vance and, therefore, was not her supervisor. Because Ball State had promptly investigated and remedied Vance’s complaints, the trial court awarded summary judgment to Ball State and the 7th Circuit affirmed that ruling.

The Supreme Court Decision

The Supreme Court agreed to hear Vance’s case for the very limited purpose of reviewing the definition of “supervisor” for purposes of Title

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VII liability. Interestingly, at oral argument, *none of the parties* advanced the proposition that the 7th Circuit’s definition of “supervisor” was correct. Ball State took the unusual position of conceding that this definition was inappropriate, even though it worked to its benefit in the lower courts. Instead, Ball State argued that Davis’s ability to influence Vance’s working conditions was so minor that, even under a broad definition, Davis would not be considered to be Vance’s supervisor.

By contrast, Vance argued in favor of the broadest definition of “supervisor” – any person who has the authority to direct another’s work in any manner. In addition, the United States, arguing as amicus in favor of neither party, argued that the Court should defer to the EEOC’s guidelines on the issue, which required an assessment of the degree of authority that one individual could assert over another.

The Supreme Court affirmed the 7th Circuit’s interpretation of the meaning of a supervisor. The Court stated that it wanted to provide employers with a clear standard, and, for that reason, held that a supervisor is limited to those individuals who can make 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.”

What This Means For You

If you operate in a state that had previously adopted a broad definition of “supervisor,” you now have the assurance that only supervisors – defined as those individuals who have authority over tangible employment decisions – can create strict and vicarious liability for harassment under Title VII. Courts will look closely at the relationship between the harasser and the victim when assessing whether the employer can be subject to vicarious liability.

Titles and job descriptions are not as important as the realities of the workplace. Regardless of the titles used, or what may be stated in a job description, vicarious liability will still be found if unlawful harassment is committed by any of your employees who have the authority to make a tangible employment decision. Based on this decision, employers should carefully assess and document who within their company has the authority to be a supervisor. These individuals should be provided training that would, among other things, remind each of their status as a supervisor and educate each on the potential risks to employers under Title VII for their conduct.

All employers should also continue to take steps to prevent harassment in the workplace by adopting, disseminating, and educating all employees on a comprehensive anti-discrimination and anti-harassment policy in order to demonstrate that the employer took reasonable measures to prevent harassment and discrimination.

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This Legal Alert provides an overview of a specific Supreme Court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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