

U.S. Supreme Court Rejects EEOC's "Nebulous" Definition of "Supervisor" under Title VII

June 24, 2013

Employers "may be vicariously liable for an employee's unlawful harassment only where the employer has empowered that employee to take tangible employment actions against the victim ...," the U.S. Supreme Court ruled on June 25, 2013, in *Vance v. Ball State University*.

Plaintiff Vance was a kitchen worker who claimed she was the victim of racial harassment by another employee Vance argued had supervisory authority. The Seventh Circuit rejected that argument because the other employee could not hire, fire or demote Vance. The Circuit Court also ruled that the University responded reasonably to the incidents of which it was aware.

Finding that the EEOC's fact-specific and malleable definition of supervisor to be confusing to jurors and frustrating to judges, the Supreme Court concluded that the framework established by its earlier decisions in *Ellerth* and *Faragher* is one under which supervisory status can usually be readily determined. Under this framework, "only a supervisor has the power to cause 'direct economic harm' by taking tangible employment action." The Supreme Court also rejected Plaintiff's concerns that victims of harassment will not be adequately protected under this test, noting that the First, Seventh and Eighth Circuit Court of Appeals adopted this approach, as well as numerous state courts, and there have been no ill effects in those jurisdictions. According to the Supreme Court, victims of harassment may still proceed under a negligence theory of liability under Title VII.

Why is this case important for employers? Vance provides significant opportunities for employers to narrow the scope of discovery early in litigation or more readily resolve claims on summary judgment where the alleged bad-actor had no authority to take actions that lead to economic harm to a plaintiff. Employers should review their job descriptions to ensure that they accurately reflect the authority of each individual as such evidence will be persuasive. Vance is also a reminder of why taking prompt remedial action to known incidents of harassment is critical.