
Supreme Court Makes it Harder for Employees to Sue for Harassment in the Workplace

By L. Steven Platt, Thomas P. Brady / Jul 01, 2013

In a 5-4 decision announced at the end of the current term, the Supreme Court made it more difficult for employees to sue their employers for harassment by supervisors. In ***Vance v. Ball State University***, No. 11-556, (U. S., June 24, 2013), the Court narrowly defined a "supervisor" as an employee who is empowered by the employer to take tangible employment actions against the victim of the harassment.

In ***Vance***, the plaintiff, an African American, worked as catering assistant in the University's catering department. Plaintiff alleged that Davis, a white catering assistant, harassed Plaintiff. Davis directed some of Plaintiff's work but did not have the power to hire, fire, demote, promote, transfer or discipline Plaintiff. Plaintiff brought an action against the University alleging racial harassment. The lower court dismissed the Plaintiff's claim finding that Davis was not a supervisor. The Seventh Circuit agreed.

On appeal, the Supreme Court noted that the employer's liability for workplace harassment under Title VII of the Civil Rights Act of 1964 depended on the status of the harasser. Where the harasser is a co-worker, the employer is liable for the harassment if the employer knew or should have known of the harassment and failed to stop it. Where the harasser is a supervisor, and the harassment culminates in a tangible employment action against an employee, the employer is strictly liable. However, if no tangible employment action is taken, the employer may escape liability for the supervisor's harassment by establishing that (1) the employer exercised reasonable care to prevent and correct any harassing behavior and (2) that the plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities that the employer provided.

The Equal Employment Opportunity Commission (EEOC) defines the term "supervisor" as an employee with the ability to exercise significant direction over a co-worker's daily work. EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*. Several Circuit Courts of Appeal, including the Seventh Circuit, limit the definition of the term "supervisor" to employees who possessed the power to hire, fire, demote, promote, transfer, or discipline another employee. The Supreme Court, adopting the seventh Circuit's definition, held "that an employer may be vicariously liable for an employee's unlawful harassment 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."

Four justices of the Court dissented and would have followed the EEOC's definition of "supervisor."

Key Takeaways: The Supreme court definition of "supervisor" limits the employer's vicarious liability to those employees who can effect significant change in an employee's status. Significant change includes the ability to hire, fire, fail to promote, reassign to a position with significantly different responsibilities, or a decision causing a significant change in benefits. Employers should identify those employees who are supervisors and ensure that they are trained in avoiding conduct that a court, jury or administrative agency would consider harassment. Employers should also ensure that their anti-harassment policies are well publicized and effectively enforced.

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