

September 24, 2013 /**24-7PressRelease**/ -- The U.S. Supreme Court recently narrowed the definition of the term "supervisor" in *Vance v. Ball State University*. While the decision immediately applies to race discrimination cases, it likely applies to other forms of illegal harassment under Title VII of the Civil Rights Act, including sexual harassment. The impact for employees who suffer [sexual harassment](#) and other forms of harassment at work is that employers can now more easily defend claims.

Sexual harassment is generally defined as unwelcome sexual conduct, including verbal, visual and physical acts that create a hostile work environment or conduct used for the basis of employment decision, such as hiring, firing, promotions or job assignments.

Employer liability for sexual harassment is usually established in one of two ways depending on whether the alleged offending employee is a co-worker or supervisor. Put simply, an employer is liable for a co-worker's unlawful harassment when the employer is negligent in resolving the employee's offensive behavior. However, when a supervisor is the alleged harasser additional rules apply because the supervisor is viewed as the employer itself. Importantly, if a supervisor is the alleged harasser and takes a tangible employment action, such as hiring, firing or failing to promote, the employer may be strictly liable or automatically liable for the illegal behavior. In addition, if the supervisor does not take a tangible employment action but creates a hostile work environment, the employer may be held responsible but not automatically. Thus, the Court's ruling and definition of a supervisor in *Vance v. Ball State University* goes to the standard a plaintiff must meet to demonstrate his or her sexual harassment case and the ease in doing so.

The definition of "supervisor"

In *Vance v. Ball State University*, the Court clarified yet narrowed the legal definition of "supervisor" for the purposes of Title VII actions. The Court held that an employer may be vicariously liable for a supervisor's unlawful harassment only when the employer has empowered that supervisor to take tangible employment actions against the victim. The Court defined tangible employment actions as being 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."

Before the decision, a conflict of definitions for supervisor existed between the Seventh Circuit, which adopted the tangible employment actions definition, and other courts, which followed guidance from the U.S. Equal Employment Opportunity Commission and allowed for a broader definition. In its ruling, the Court explained that Title VII does not provide a statutory definition of "supervisor" and the definition provided in the EEOC Guidance is "too nebulous" and requires "a

The new definition of "supervisor" for Title VII harassment cases

Written by Australian Business

highly case-specific evaluation of numerous factors." In short, the Court believed the EEOC Guidance was too complicated and unwieldy and therefore opted for the Seventh Circuit's definition which the Court described as providing a "clear distinction" between supervisors and co-workers and built upon previously created case law.

While the majority decided to create a black letter definition for "supervisor" with the purpose of making the standard simpler for plaintiffs, defendants and juries, the dissent, written by Justice Ginsburg, viewed the definition as being out of step with supervisorial duties in today's workplace.

The dissent's view and the impact of the decision

In today's work environment the duties of a traditional supervisor are stratified across layers of management. Often, a worker's direct supervisor has control over the worker's environment, such as work duties and hours, but does not have the ability to hire and fire. Picking up on the difference between the Court's newly minted definition of supervisor and how a supervisor in name functions in the workplace, Justice Ginsburg argued the majority's ruling is "out of touch with the realities of the workplace." Moreover, she warned about the outcome the decision would produce. Ginsburg wrote a worker can walk away from a fellow employee's harassment, but the same worker cannot as easily avoid or confront an employee with some supervisory duties.

While holding an employer vicariously responsible for illegal harassment may have become more difficult, employees should still contact an experienced employment law attorney if they are the target of sexual or other harassment in the workplace.

New York State residents should additionally be aware that the New York State Human Rights Law and the New York City Human Rights Law have both been construed favorably for Plaintiffs in situations where the Federal Law Title VII has failed them. Victims considering litigation should not be dissuaded from meeting with an experienced employment attorney by this recent development, their rights in New York State could be stronger than their Federal claims.

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