# Supreme Court Narrows "Supervisor" Standard - and Employer's Liability - for Title VII Work Place Harassment Claims

***Vance v. Ball State University*, --- S.Ct. ---, 2013 WL 3155228 (U.S., June 24, 2013)**

In this 5-4 decision, the United States Supreme Court resolved a split among the circuits as to when an employee qualifies as a "supervisor" such that their conduct can impose liability on the employer. In so doing, the Court relied on its seminal decisions - *Ellerth* and *Faragher* - in determining that it must be a person whom the employer has authorized to take "tangible employment actions" with respect to the alleged victim. The Court also criticized and rejected the EEOC's broader position on this issue.

Ms. Vance was an African-American catering department worker at Ball State University ("BSU"). She alleged that Caucasian fellow employee, Saundra Davis, harassed her to the point of creating a hostile environment. Vance had complained that Davis, among other things, "gave her a hard time at work by glaring at her, slamming pots and pans around her, and intimidating her." *Vance*, at *3, *citing* 646 F.3d 461, 467 (7th Cir. 2011). Despite BSU's attempt to deal with the situation, Vance's workplace problems continued. In her district court complaint, Vance alleged Davis was her supervisor and that BSU was liable for Davis' creation of a racially hostile environment. *Id*. at *4.

The district court granted BSU's summary judgment Motion on the grounds that BSU could not be held liable for Davis's conduct because she was not, as a matter of law, Vance's supervisor under Seventh Circuit precedent. That is, she could not hire, fire, demote, promote, transfer, or discipline Vance. *Id*. The court also determined that BSU had responded reasonably and so could not be held liable in negligence. Vance appealed to the Seventh Circuit Court of Appeals, which affirmed on the two key points: a) Davis was not Vance's supervisor; and, b) BSU had reasonably responded. *Id*. Vance filed a Petition for Writ of Certiorari, which the United States Supreme Court granted, later stating that it did so to resolve the obvious disagreement in the circuit courts between two views about "the meaning of the concept of a supervisor in this context [hostile environment claims under Title VII]". *Id*. at *7.

The Court, referring to the framework it set out in *Ellerth* and *Faragher,* stated that an employer may be vicariously liable only 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." *Id*. The Court took ownership and control of the term "supervisor" in this context, pointing out that it is not a statutory term and that it adopted it in *Ellerth* and *Faragher*. *Id*. at *9. The Court also expressly rejected the "nebulous definition of a supervisor" used in the EEOC's Enforcement Guidance and substantially adopted by several courts of appeals. *Id*. at *7. The Court made clear it was relying on both its *Ellerth* and *Faragher* decisions, as well as other sources, to label the approach of Vance and of the EEOC's Guidance as "a study in ambiguity," [*Id*. at *12] "which would make the determination of supervisor status depend on a highly case-specific evaluation of numerous factors." *Id*.

Judge Clarence Thomas wrote a very brief concurring opinion, reaffirming his view that *Ellerth* and *Faragher* were incorrectly decided. Judge Ruth Bader Ginsburg wrote a lengthy dissenting opinion, expressing her view that the Court was clearly heading the wrong way on the main issue under scrutiny.

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It is noteworthy that both the Seventh and Eighth Circuit Courts of Appeals were among the circuits which the United States Supreme Court included in the 14 jurisdictions following the chosen approach. [*Parkins v. Civil Constructors of Ill., Inc.*, 163 F.3d 1027, 1032 (7th Cir. 1998); *Weyers v. Lear Operations Corporation*, 359 F. 3d 1049, 1057 (8th Cir. 2004)]. The Court also expressed its expectation that under the clarified standard, a contested issue of supervisor status could very often be resolved as a matter of law before trial. *Vance*, at *13. By contrast, it also stated that the "alternative approach" would have made cases far more complicated and difficult, and would impede the resolution of this issue before trial. *Id*. at *14.

Clearly, this opinion is significant because it resolves a core issue in Title VII harassment cases – how to determine whether an employee is a "supervisor" for purposes of vicarious liability for the employer. More importantly for employers is that the Court endorsed the tighter and more logical of the two main approaches. The Court certainly seems to have correctly assessed that its clarification should lead to many more cases being resolved at the dispositive motion phase. That is a much better alternative, as opposed to being forced to defend a jury trial with the standard proposed by petitioner Vance and the EEOC, which the Court described as a "remarkabl[y]" ambiguous concept. *Id*. at *12.

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