Who Is A "Supervisor" Under The Tile VII Sexual Harassment And Discrimination Claims?

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Under Title VII of the Civil Rights Act of 1964, employees have the right to be free from a hostile work environment on the basis of one's race, color, religion, sex, or national origin. In general, an employer is directly liable for unlawful discrimination or harassment toward an employee if the employer was negligent with respect to the offensive behavior. But where the harassing employee is the victim's supervisor, the employer may be held vicariously liable for the supervisor's creation of a hostile work environment unless it can affirmatively prove that (1) it exercised reasonable care to prevent and correct the harassing behavior, and (2) the employee unreasonably failed to take advantage of the preventative or corrective opportunities that the employer provided.

Lower courts have long disagreed, however, over who qualifies as a "supervisor" for purposes of Title VII. In Vance v. Ball State University, 133 S. Ct. 2434 (2013), the U.S. Supreme Court finally brought some clarity to this question, holding that a "supervisor" is an employee who has the authority to take "tangible employment actions" against the victim employee, such as hiring, firing, failing to promote, reassigning the victim to significantly different responsibilities, or making a decision causing a significant change in benefits. In reaching its decision, Justice Alito explained that defining a "supervisor" more broadly, as the employee Vance had argued for, would often result in "murky" determinations and fail to rectify the ambiguity that has long pervaded this question.

Both employees and employers should be well aware of the practical implications of the Supreme Court's recent holding, as it will undoubtedly impact the viability of employee discrimination claims. While employers believe Vance was a clear victory for them, as it narrowed the category of employees for whose acts it could be held vicariously liable, employers should not overstate the importance of Vance. Indeed, Justice Alito made clear in his opinion that employers could not abuse the newly promulgated definition by placing all supervisory authority in the hands of only a few people, and that if an employer did do so, courts should deem the employer to have effectively delegated power to take tangible employment actions to those lower-level employees on whose recommendations it relies.

Thus, although the Vance decision on its face seems to narrow their ability to hold their employers liable for hostile work environments, employees should not fear the repercussions of the Vance decision in its entirety. Employees are in fact still left with multiple avenues to prove their claims.

Notably, "tangible employment actions" include "reassignment with significant different responsibilities." Juries can thus still easily find that a supervisor who required an employee to cooperate with day-to-day instructions had the authority to significantly alter the victim's responsibilities.

Additionally, even if an employee's "supervisor" status is undisputed or established by the parties, employees can still proceed past summary judgment to trial where the employer knew about the hostile work environment, such as through an employee's complaints to high-ranking executives and Human Resources. In fact, the Supreme Court in Vance actually envisions trial even where an individual's status as a supervisor is determined as a matter of law, explaining that "the elimination of this issue from the trial will focus the efforts of the parties" to proving whether the employer was negligent or whether the employer will have to prove an affirmative defense to escape liability.

Finally, as was true prior to Vance, employers will be automatically liable for the acts of mere coworkers if they are "negligent in failing to prevent harassment from taking place." And in those cases, Justice Alito even noted that courts should instruct juries to consider "the nature and degree of authority wielded by the harasser" as an important factor in determining whether an employer was negligent.

Whether the Supreme Court's ruling in Vance will stand, though, is yet to be determined. After all, as noted by Justice Ruth Bader Ginsburg in her dissent, it would not be the first time that Congress legislatively overruled a Supreme Court interpretation of the 1991 Civil Rights Act.

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