



Questions Raised Regarding Who Qualifies as a Supervisor

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In a case that could impact employers everywhere, *Vance v. Ball State University*, Docket No. 11-556, the U.S. Supreme Court is considering who qualifies as a supervisor pursuant to *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998). Or maybe not.

Much has been written about the potential consequences of the court's ruling — that the definition of supervisor under Title VII could include more than just those who can hire, fire, demote, promote or discipline an employee. Because of the facts at issue in the case, it is also possible that the court will decide that certiorari was improvidently granted or that the court will answer a question so narrow in scope that it will not provide a resolution to the current split in authority. Regardless of the court's decision, employers should take this opportunity to review the responsibilities and authority vested in their employees and to make sure that all employees are properly trained on the company's anti-harassment policies and procedures.

Maetta Vance, a catering assistant in university dining services at Ball State University and the only African-American individual on the staff, alleged that Sandra Davis, a catering specialist, and another co-worker created a hostile work environment through physical acts and racial harassment. After each incident of harassment, Vance complained to management, which investigated the complaints and issued counseling and warnings to the alleged harassers. Vance asserted that Davis was a supervisor and, therefore, she need not prove that Ball State was negligent in responding to complaints of harassment; rather, she alleged, Ball State was liable because Davis' actions were imputed to the university.

The U.S. District Court for the Southern District of Indiana granted Ball State's motion for summary judgment, explaining that the alleged harasser (Davis) was merely a co-worker and did not qualify as a supervisor for the purposes of respondeat superior liability under Title VII. The U.S. Court of Appeals for the 7th Circuit affirmed. Notably, both courts found that Ball State had an adequate system in place for reporting and investigating claims of harassment under Title VII and, therefore, could not have been negligent.

Regardless of which question gets answered, it seems unlikely to be the bright-line standard advocated by the 7th Circuit. Thus the only clear message becomes that not only do true supervisors need to be properly trained, employees with even the perceived authority to direct and oversee other

employees' daily work should also be properly trained. For employers, re-examining job definitions will also be key: Are you delegating too much supervisory-like responsibility to mere co-employees? Do more than true supervisors have the authority to oversee aspects of another employee's job performance? Vance may provide some guidance as to who is a supervisor, and it will be important, now more than ever, for employers to ensure that all supervisors and those employees with certain authority be properly trained.

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