

# Supreme Court Decides Who is a Supervisor. What Every Employer Needs to Know about the Supreme Court's Ruling.

On June 24, 2013, the United States Supreme Court ("Court") issued a highly anticipated decision, in *Vance v. Ball State University*, No. 11-556, that clarified the standard for liability of employers in discrimination cases brought under Title VII of the Civil Rights Act of 1964 ("Title VII"). Prior case law held that when a supervisor makes a tangible employment decision which is discriminatory, it is appropriate to hold the employer strictly liable under a theory of vicarious liability. However if the individual is a mere employee, without power to take tangible employment action, negligence provides the better framework for establishing an employer's liability. The question of who is a supervisor thus becomes an important issue. The Justices considered whether an employee who oversees another's daily work is a supervisor, or whether a supervisor is limited to an employee who can hire, fire, promote or discipline. The Court ruled that an employee is a supervisor, for purposes of vicarious liability under Title VII, only if he or she can take tangible employment action against the victim.

## **What is a tangible employment action?**

Justice Alito, writing for the majority in the 5-4 decision, stated that a tangible employment action is the ability 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. ”

### **What this means for employers?**

Employers should give power to its employees carefully, and in writing, via a well thought out job description. The job description should carefully delineate who has the power to make tangible employment decisions such as hiring, firing, giving raises, promotions, and reassignments.

### **Who decides the issue of supervisory status?**

“Supervisory status can usually be readily determined, generally by written documentation.” Judge Alito believes the concept of supervisor is “easily workable; it can be applied without undue difficulty at both the summary judgment stage and at trial.”

### **How summary judgment affects employers.**

Summary judgment means the case can be decided early, by the judge – without a jury, as a matter of law. This saves time, and in litigation, saving time usually equals saving money. If the employer has put this authority, or lack thereof, in writing, in job descriptions that clearly identify if the employee has the authority to hire, fire, promote, reassign, etc. , the judge has the power to decide who is and is NOT a supervisor.

This is especially important where allegations of discrimination are that the employee “gave her a hard time . . . by glaring at her, slamming pots and pans around her, and intimidating her,” “left her alone in the kitchen with [someone] who smiled at her” and that someone blocked her on

the elevator with their cart and stood there smiling at her and often gave her weird looks.

Doesn't sound like the basis for an employment law discrimination case? It got Vance all the way to the Supreme Court.

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