

## *KD Alert: Eagerly-Awaited Decision a Boon to Business?*

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 (July 3, 2013)

On June 24, 2013, the United States Supreme Court issued a decision which narrowed the definition of “supervisor” for purposes of determining an employer’s liability arising out of workplace harassment under Title VII of the Civil Rights Act of 1964, as amended. The 5-4 decision in *Vance v. Ball State University*, No. 11-556, 570 U.S. – (2013) holds that an employer is only liable for the discriminatory conduct of an employee who can effect “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.”

This (somewhat) newly minted definition of a “supervisor” for Title VII purposes should be welcomed by employers as it effectively limits vicarious liability to those managers with actual “hire and fire” authority. In turn, an anticipated reduction in the number of workplace claims is not an unreasonable forecast, as disgruntled employees are forced to train their sights elsewhere for remedial relief.

### **Background**

**Under Title VII, an employer is vicariously liable for the unlawful conduct of a supervisor who subjects a subordinate employee to a hostile work environment that results in a tangible employment action such as a termination, demotion, failure to promote or loss of benefits. Similarly, the Court has previously held in *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) and *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998) that, under Title VII, an employer can also be liable for the harassing conduct of a co-worker, but only if the employer is negligent in remedying the harassment.**

The word “supervisor” was subject to varying definitions as courts determined whether an individual so titled could bind an employer to unlawful conduct. *Vance* establishes a specific threshold that was previously lacking, in attempt to bring uniformity to Title VII compliance.

### **History**

**The** *Vance* case arose when plaintiff Maetta Vance, a Catering Assistant and the only African American employee in Ball State University Banquet and Catering Division, alleged that another employee at Ball State subjected her to unlawful harassment and retaliation based upon her race. After investigating Vance’s complaint, Ball State declined to formally discipline the supervisor. Vance filed a complaint in the District Court for the Southern District of Indiana alleging that Ball State racially discriminated against her in violation of Title VII. Ball State filed for summary judgment on grounds that it was not liable for the supervisor’s actions since Davis was not actually a supervisor. The U.S. District Court agreed, finding Ball State not vicariously liable since the supervisor “did not have the power to hire, fire, demote, promote, transfer, or discipline Vance.” The fact that this employee had periodic authority to direct the work of other employees did not make her a supervisor. The Seventh Circuit Court of Appeals affirmed the District Court’s decision. Vance subsequently appealed to the Supreme Court.

### **Applying the Vance Decision to Your Company**

**The Supreme Court’s decision resolved a split in authority among the federal circuit courts of appeal. While the** *Vance* definition of a “supervisor” is only limited to Title VII, employers should (cautiously) welcome its application to other federal employment statutes, including the Fair Labor Standards Act and the National Labor Relations Act, two statutes that have taken on more expansive definitions of “supervisor” for liability purposes.

*Vance* makes clear that employers should affirmatively establish which employees they consider to be supervisors. Employers should include in the job description for each supervisory position the duty to hire, fire, demote, promote, transfer, or discipline subordinate employees. By clearly delineating which employees are supervisors, employers may avoid litigating future lawsuits that hinge on the

*issue of supervisory duties. While an accurate job description is certainly recommended, what the individual actually does on a day-to-day basis will control, not the job description.*

*If you have questions about whether your supervisors meet the standard set forth in the Supreme Court's decision, please contact one of the attorneys in KD's Labor and Employment Law Group. Our firm provides employers with guidance in formulating and implementing employment policies and decisions to stay ahead of new and often complex statutory regulations, and minimize their potential liability exposure.*