

Supreme Court to Define Supervisors in Discrimination Case

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The [Supreme Court](#) on Nov. 26 heard arguments in a case that could redefine who is considered a supervisor in the workplace for legal purposes. The ruling could have far-reaching effects, because the broader the definition of supervisor, the easier it is for employees to bring discrimination cases against their employer.

In [Vance v. Ball State University](#), justices will decide whether the university is responsible for alleged racial harassment experienced by a catering employee. Maetta Vance was the only black worker in the catering department when she says she was subjected to a series of degrading and harassing racial insults by several other employees.

According to the complaint, coworkers bragged about their ties to the Ku Klux Klan and directed a number of extremely offensive racial epithets toward Vance. One employee, Sandra Davis, allegedly struck Vance in the head and later threatened to hit her again.

Vance's lawsuit was dismissed by a district court, then the 7th U.S. Circuit Court of Appeals, on the grounds that Ball State wouldn't be liable because her harassment came from a coworker, not a supervisor. Vance had not "established a basis for employer liability on the hostile work environment claim," [according to the 7th Circuit](#).

Employment harassment suits are guided by [Title VII of the 1964 Civil Rights Act](#), which bans discrimination based on race, color, religion, sex and national origin.

Vance complained officially to Ball State in 2005 about her colleagues, and the university issued a written warning to one employee and recommended respect counseling for Davis and Vance. Other complaints were not acted on because they were unable to be corroborated by witnesses.

"While it is unfortunate that Ball State's remedial measures did not persuade Davis or [another employee] to treat Vance with respect, and we have nothing but condemnation for the type of conduct Vance has alleged, we find that Ball State satisfied its obligation under Title VII by promptly investigating each of Vance's complaints and taking disciplinary action when appropriate," the court ruled.

What Makes a Supervisor?



Lower court decisions on the definition of supervisor have varied. Three circuit courts have ruled that to be a supervisor, someone needs to be able to hire, fire, promote, demote or discipline other employees. Three other circuit courts have ruled that directing the work of others is sufficient to be considered a supervisor for legal purposes. The EEOC guidelines use the broader definition.

Donald W. Schroeder

“If the alleged harasser is a coworker, it’s a much lower burden upon the employer,” says [Donald W. Schroeder](#), a labor and employment attorney with the firm [Mintz Levin](#). “The issue becomes did the employer know or should have known of the harassment, and if so, did the employer take immediate and appropriate corrective action.” If the employer acted properly, then the plaintiff’s lawsuit wouldn’t be allowed to proceed.

The burden on the employer goes up if a supervisor is involved in the harassment or discrimination. “If the [harasser] is a supervisor and that person failed to get a promotion or was demoted or fired, that would constitute a tangible adverse employment action,” Schroeder explains, and the employer would be subject to a lawsuit.

In a curious twist, Ball State, as well as the United States Solicitor General, had recommended that the Supreme Court not take the case up, because Davis had no power to direct Vance in the workplace and therefore wouldn’t be considered a supervisor under either definition of the term. However, Vance’s attorneys put forward the argument that Vance believed that Davis was her supervisor.

If the Supreme Court justices issue an iron-clad definition of who constitutes a supervisor, the decision will have big implications for complaints about other types of hostile work environments, particularly sexual harassment. “Obviously the definition of supervisor and any changes to it will have a somewhat dramatic impact on harassment cases brought under Title VII,” Schroeder says. “To the extent you are including a more expansive definition of supervisor, you are limiting the ability for an employer to establish any affirmative defense to a harassment claim.”

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