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On The Radar: Supreme Court Set To Resolve Circuit Split As To Definition Of Supervisor Under Title VII

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The Supreme Court of the United States has agreed to review a Seventh Circuit decision involving the definition of a "supervisor" under Title VII. The case, *Vance v. Ball State University*, could have significant employment law ramifications because "supervisors" automatically subject an employer to vicarious liability for its supervisors' harassing conduct.

Currently, the Seventh Circuit requires that employees have the authority "to hire, fire, demote, promote, transfer, or discipline an employee" to be considered a supervisor. This bright-line, narrow definition ensures that alleged supervisors have the authority to "take tangible employment actions" against subordinates before liability will attach to the employer. On the other hand, the Second and Fourth Circuit (as well as the EEOC and the current United States Attorney General), consider an employee to be a supervisor when he or she has the authority to control the alleged victim's daily work activities in a way that materially enables the harassment. This latter standard is significantly broader than the Seventh Circuit formulation because it does not require the authority to hire, fire, promote, etc.

Arguments are scheduled for late November, and Barnes & Thornburg attorneys will be keeping a close eye on this important decision.

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