

## Supreme Court Examines “Supervisor” Definition In Bias Suits

November 27, 2012 | [Employment Discrimination, Labor And Employment](#)

On Monday, the U.S. Supreme Court heard oral arguments regarding the definition of a “supervisor” as it relates to an employer’s vicarious liability under Title VII of the Civil Rights Act of 1964. In *Vance v. Ball State University*, the Court pressed both sides to explain what the impact would be should it expand the “supervisor” definition under *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998) should the Court choose to expand the “supervisor” definition. A copy of the hearing transcript is [here](#).

Currently, under certain circumstances, an employer can be vicariously and strictly liable for workplace harassment of, and discriminatory conduct directed toward, subordinate employees by “Supervisors.” However, under *Faragher* and *Ellerth*, an employer is vicariously liable for harassment or discrimination inflicted by employees’ co-workers **only if** the complaining employee can prove that the employer was negligent in either discovering or remedying the offending conduct. The *Vance* Court will decide whether the “supervisor” definition (a) includes only those management-level employees whom the employer vests with authority to direct and oversee other employees’ daily work; or (b) is limited to those management-level employees who have the power to “hire, fire, demote, promote, transfer, or discipline” their victim.

At oral arguments, both sides urged the Court to adopt a standard similar to the standard utilized by Second Circuit or the U.S. Equal Employment Opportunity Commission, both of which consider employees with the authority to direct the alleged victim’s daily work activities to be supervisors. The Seventh Circuit’s definition, as rendered in *Vance*, requires an employee to have the power to hire, fire, demote, promote, transfer, or disciplined an alleged victim to be deemed a supervisor.

Interestingly, Justices Scalia and Alito appeared disappointed that both sides argued against the Seventh Circuit’s definition in *Vance*, claiming it to be overly broad and failing to include certain employees who should be considered supervisors. Instead, the difference between the parties’ arguments centered on whether remand was warranted. Ms. Vance’s counsel asserted that further discovery would be necessary if the Court announced a new definition for who is considered a supervisor. In comparison, counsel for Ball State University argued that the Court should announce the new definition and still affirm the Seventh Circuit’s decision since it did not change whether the individual at the center of the controversy was a “supervisor.” Counsel for Ball State explained that person served solely as a conduit for other supervisor’s work assignments to Ms. Vance.

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