Rejecting the Equal Employment Opportunity Commission’s broader definition (1999 EEOC Enforcement Guidance), the U.S. Supreme Court has held that an employee is a “supervisor” for purposes of imposing vicarious liability on an employer under Title VII of the Civil Rights Act of 1964 only if the employee is empowered by the employer to take tangible employment actions against the victim. Vance v. Ball State University, No. 11-556 (June 24, 2013). The Court defined “supervisory” authority to include having the power to make “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.”

Chief Justice John Roberts and Justices Anthony Kennedy and Antonin Scalia joined Justice Samuel Alito’s opinion, while Justice Clarence Thomas concurred in the judgment. Justice Ruth Bader Ginsburg authored a dissenting opinion, which was joined by Justices Stephen Breyer, Sonia Sotomayor and Elena Kagan.

Maetta Vance, an African-American catering employee at Ball State University, claimed a White co-worker had slapped her, threatened her and used racial epithets. Vance said the co-worker had the authority to direct her work and qualified as a supervisor, making the University vicariously liable for a hostile work environment. The Supreme Court disagreed. According to the Court, an employer can be held vicariously liable in a Title VII hostile work environment claim if the employee accused of the harassment is empowered by the employer to take tangible employment actions against the plaintiff. Since Vance’s alleged harasser did not have such power, the school was entitled to summary judgment in its favor. Justice Alito stressed that hostile work environment victims are not without a remedy when a harasser is deemed a co-worker. Victims of co-worker harassment will succeed if they can show their employer was negligent in allowing the harassment to occur.

The Court considered but rejected the EEOC’s Guidance, which would find an alleged harasser a supervisor if that employee had the “ability to exercise significant direction over another’s daily work,” as “nebulous,” “ill-defined” and overly fact-specific. In contrast, the Court found its “tangible employment action” standard to be “easily workable.” A significant advantage of its bright-line test, the Court said, was that supervisory status can “usually be readily determined, generally by written documentation” and done so at the summary judgment stage or earlier.

Dissenting Opinion
Justice Ginsburg wrote that the Court’s new rule “strikes from the supervisory category employees who control the day-to-day schedules and assignments of others,” and therefore “ignores the conditions under which members of the work force labor.” She continued, “The Court’s disregard for the realities of the workplace means that many victims of workplace harassment will have no effective remedy.”

Supervisor Status Varies
In advocating for a more plaintiff-friendly definition of supervisor in the harassment context, Justice Ginsburg suggested that the EEOC’s expansive definition is consistent with the manner in which supervisor is defined under the National Labor Relations Act. Justice Alito, responding, wrote that the meaning of “supervisor” under the NLRA differed from the Court’s new Title VII standard. Although
the definition of supervisor found in the NLRA is written in broad language, he observed, the application of the statutory definition by the Board has been decidedly narrow. Citing Justice Ginsburg's opinion from an earlier Board case, Justice Alito observed that the NLRB looks to the specific facts of each case and makes a case-by-case determination. It evaluates whether the putative supervisor uses independent judgment in the exercise of his or her authority and is held responsible by the employer for the actions of subordinates. According to Justice Alito, in application, “supervisor” is not as broadly defined under the NLRA as Justice Ginsburg argues. In any event, and as the Supreme Court's ruling notes, the NLRA definition is not applicable in determining supervisory status under Title VII because the two statutes have divergent purposes, i.e., the NLRA’s purpose is to address the imbalance between labor and management while Title VII's is to eradicate discrimination.

Implications
Despite the Court's bright-line test, issues of workplace authority and supervisory status will continue. Providing some hope to plaintiffs, Justice Alito wrote that juries nevertheless should be instructed that day-to-day authority wielded by a co-worker “is an important factor to be considered in determining whether the employer was negligent” in permitting co-worker harassment, even if the perpetrator is not a supervisor. On the other hand, Justice Ginsburg contemplated that even an employee with authority to recommend and heavily influence hiring, promotion and termination might not rise to the level of a “supervisor.” The issue also may receive legislative attention. Ginsburg ended her dissent by calling on Congress to intervene to correct the majority's “wayward interpretations of Title VII,” as it has done in the past (e.g., the Lilly Ledbetter Act).

Vance is a welcome ruling for employers. The Court's focus on using documentation to evaluate “supervisor” status should impel employers to review the job descriptions of employees who assume quasi-leadership roles and to make sure they are accurate. Employers should continue with their efforts to prevent workplace harassment through training and aggressive investigation of alleged harassment. If Justice Alito is correct, the negligence model for hostile work environment claims will remain a potent strategy for establishing liability.

If you have any questions about this or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.

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