United States Supreme Court Poised To Rule on Significant Employment Case Affecting Civil Rights Law in Michigan

Karl W. Butterer
Foster Swift Employment, Labor & Benefits E-News
February 20, 2013

AUTHORS/ CONTRIBUTORS
Karl W. Butterer

PRACTICE AREAS
Employer Services
Employment Law

The United States Supreme Court is poised to make a decision that may affect how the federal courts treat Michigan employers sued for violations of Title VII, the federal law that prohibits race and gender discrimination and harassment. The question at the heart of *Vance v Ball State University* is "*Who is a supervisor?*"

Federal anti-discrimination laws make an important distinction between workplace discrimination or harassment perpetrated against an employee by a fellow *co-worker* versus by a *supervisor*. Where an employee is discriminated against or harassed by a fellow co-worker, the employer may only be held liable for these bad acts if the employer was negligent either in discovering or remedying the harassment. In other words, if the employer did not have notice of the co-worker's bad acts, or took reasonable steps to stop the bad acts, then the employer may avoid liability.

Employers are more likely to be liable for discrimination and harassment committed by an employee's supervisor. For example, where a supervisor terminates, demotes or reduces the pay of an employee because of the employee's race or gender, an employer will automatically be held liable for those acts. However, if a supervisor sexually or racially harasses an employee but does not make a tangible adverse employment decision against the employee (e.g. a demotion), the employer may avoid liability if

1. it exercised reasonable care to prevent and correct the bad behavior; and
2. the victim unreasonably failed to take advantage of the employer's efforts to stop the behavior.

For example, if the employer had a robust anti-discrimination policy and the victim failed to report the harassment under the policy, then the employer may avoid liability for the acts of the supervisor.

Significantly, neither the United States Congress, nor the United States Supreme Court has ever defined the term "supervisor." Lower federal courts define the term differently. As things stand now, whether a person is a "supervisor" or a "co-worker" may depend on where the employer is located. The Sixth Circuit court, the federal court with jurisdiction over Michigan, has never published a decision defining "supervisor."

The United States Supreme Court will likely define the term "supervisor" in the *Vance* case. The employee in *Vance* advocates a broad definition of "supervisor" to include all personnel overseeing the victim's daily work assignments and performance. The employer advocates a much narrower definition, which only includes those with power over formal employment status, e.g. the ability to hire, fire, demote and discipline.

How the *Vance* Court ultimately defines "supervisor" under federal law may be the difference between a Michigan employer winning or losing a federal discrimination case. Please note that Michigan's state anti-discrimination laws differ in some respects from federal law, including whether a supervisor may be held personally liable.

This summary was prepared by Karl Butterer, who specializes in employment and civil rights matters. If you have any questions, please feel free to contact Karl directly at (616)726-2212.