



WHO IS A SUPERVISOR?
THE SUPREME COURT PROVIDES CLARITY FOR TITLE VII HARASSMENT CLAIMS
by Laura K. Sitar

As is often the case the U.S. Supreme Court finished up its term this year with several high profile cases. Lost in the shuffle was an important employment case, *Vance v. Ball State University*, No. 11-556, which clarified the meaning of the word "supervisor" for the purposes of vicarious liability in Title VII workplace harassment cases. The plaintiff in *Vance* alleged a catering specialist where she worked had created a racially harassing environment. The parties hotly contested whether the alleged harasser was plaintiff's supervisor. In a decision likely to warm the hearts of employers across the country, the Supreme Court held a "supervisor" is an individual with the authority to take "tangible job action" against the employee claiming harassment. That authority must include the ability to "hire, fire, demote, promote, transfer, or discipline."

While the Supreme Court's definition may seem obvious, it is an important departure and limitation on the much more flexible definitions which had been used by the Equal Employment Opportunity Commission and a number of federal circuits including the Ninth which defined a supervisor as an individual with the ability to "exercise significant direction over" or "direct and oversee" another's daily work. These looser interpretations tended to unreasonably include lead employees with the ability to direct work, but little real supervisory authority.

The Supreme Court's definition is a win for employers who may be held strictly liable for workplace harassment committed by their supervisors. Employers should consider reviewing job descriptions to make sure they clearly define supervisory and non-supervisory positions using the language set forth in the Supreme Court's decision.

One caution however for an employer with workers in California, the Supreme Court's decision applies to harassment cases brought under Title VII, a federal law. There continues to be a much looser definition of who is a "supervisor" for cases brought under the California Fair Employment and Housing Action. The FEHA defines "supervisor" as anyone having authority "to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Government Code §12926(s). It seems now we have a lot more supervisory employees in California than in the rest of the country.

About the Author:

A shareholder at Wroten & Associates, Laura Sitar defends medical malpractice, employment, and elder abuse cases. She litigates cases on behalf of doctors, dentists and long-term care facilities involving all types of employment actions including sexual harassment, wrongful termination, retaliation and wage and hour claims. She also provides employment related risk management services to help clients avoid litigation. Ms. Sitar became an attorney after a 15-year career in corporate management where she directed the human resource function of a 2000 employee, \$100 million region. Since commencing a second career in law 10 years ago, she was a senior associate with a prestigious healthcare defense firm before joining Wroten & Associates, where she is a shareholder.

Ms. Sitar graduated cum laude from Tufts University, in Boston Massachusetts in 1979. She attended Western State University, College of Law, where she graduated summa cum laude and valedictorian of her class in 1998. While at Western State she clerked for Justice William Rylaarsdam on the California Court of Appeals and successfully argued a sexual harassment and retaliation claim before the Ninth Circuit Court of Appeals. She was a recipient of the 1998 Fellowship of the American Board of Trial Advocates. Ms. Sitar has been a member of the California State Bar since 1998 and is admitted to practice in the U.S. District Court for the Central District of California. Visit Wroten & Associates at www.wrotenlaw.com . Contact Laura lsitar@wrotenlaw.com