

## Legal Updates

**VANCE v. BALL STATE UNIVERSITY 646 F.3d 461 (2011)**

***Maetta VANCE, Plaintiff-Appellant, v. BALL STATE UNIVERSITY, et al., Defendants-Appellees. No. 08-3568. United States Court of Appeals, Seventh Circuit.***

The United States Supreme Court agreed to hear a case which could help define the definition of a supervisor in harassment cases.

The plaintiff, Maetta VANCE, was the only African-American working in her department at Ball State University. The plaintiff began filing complaints about her coworker's offensive conduct in 2005. Ms. Vance said the coworkers used racial slurs, references to the Ku Klux Klan and other unpleasantries which caused her to file two complaints with the Equal Employment Opportunity Commission (EEOC) in 2006 for retaliation and race discrimination.

After having her case dismissed she appealed and charged violation of Title VII of the Civil Rights Act 1964. Vance began her employment at Ball State in 1989 with part-time employment in the catering department of the University. In 2007 Vance was selected for a position as a full-time catering assistant within the department. Her job included baking and food preparation. The plaintiff claimed that in approximately 2001 a new supervisor took over and made her feel unwelcome and routinely used a gruff tone of voice with her.

In 2005 Vance made a formal complaint with the University compliance office about racial slurs and for the first time brought up a physical altercation with another employee. The university immediately began an investigation and it confirmed the racial slurs the plaintiff had alleged. The University issued a strong written warning to the employee involved. The discord between employees and the plaintiff continued with a variety of complaints many of which could not be substantiated being voiced by Vance.

On May 10, 2006, Vance filed a complaint with Ball State against her supervisors, alleging that they forced her to work through breaks. Ball

State investigated but found no factual basis for the allegation. In August 2006, Vance filed a second complaint with the EEOC alleging that Ball State retaliated against her by assigning her diminished work duties, forcing her to work through breaks, denying her the chance to work overtime hours, and unequally disciplining her. She filed this lawsuit on October 3, 2006.

The United States Supreme Court will decide on this case during this term. Vance who claimed she was a victim of harassment by another Ball State supervisory employee who oversaw her daily work, but lacked the power to fire, discipline, demote, or transfer her.

The issue in this case is whether someone in this position constitutes a "supervisor" under its definition in title VII of the 1964 Civil Rights Act. The plaintiff argues that harassment is more serious when it comes from a direct immediate supervisor, who may not have the ability to fire, but has immense control of his subordinate's day-to-day duties.

If the court decides that the harassing employee is not the plaintiff's supervisor then the employer will normally not be liable unless it can be proved that the organization was negligent in following up on complaints. However, if the court decides that the harassing employee is a supervisor then the University may be vicariously liable for harassment. Up to now the lower courts have disagreed on the interpretation of the term supervisor and the United States Supreme Court will finally address the issue and determine the answer with finality.