

Chapter 2

Pivotal Recent Supreme Court Cases and National Labor Relations Board Actions Affecting Employers

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§ 2.01. Update on Employment Law Issues.

[1] — 2013 Supreme Court Cases Affecting Employment Law.

[a] — *Vance*: Who Qualifies as a Supervisor in Title VII Harassment Cases?

In *Vance v. Ball State University*,² the United States Supreme Court narrowed the scope of who constitutes a “supervisor” for purposes of Title VII liability.³ Under traditional agency law principles, an employer can be held vicariously liable under Title VII if one of its supervisors engages in discriminatory behavior.⁴ The Court in *Vance* limited which employees qualify as supervisors. A supervisor is no longer any individual who directs the daily activities of other employees, but instead is one who has the ability to take “tangible employment actions,” such as hiring, firing, disciplining, promoting, or reassigning.⁵

² *Vance v. Ball State Univ.*, 133 S. Ct. 2434 (2013).

³ Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e-2(a)(1) (2012).

⁴ *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

⁵ This analysis is different than supervisory status under other statutes, such as the National Labor Relations Act.