HIGH COURT NARROWLY DEFINES "SUPERVISOR"
Under Title VII, an employer's liability for workplace harassment may depend on the status of
the harasser. If the harasser is the victim's coworker, the employer is liable only if it was
negligent (i.e., if the employer knew or should have known about the harassment but failed to
take remedial action). If the harasser is a "supervisor," different rules apply. If the harassment
involves a tangible employment action, the employer is strictly liable. If not, the employer may
avoid liability by establishing, as an affirmative defense, (1) it exercised reasonable care to
prevent and correct any harassing behavior, and (2) the employee unreasonably failed to take
advantage of the preventive or corrective opportunities the employer provided.

In a recent divided opinion in the case Vance v. Ball State University, the Supreme Court held
"an employee is a 'supervisor' for purposes of vicarious liability under Title VII if he or she is
empowered by the employer to take tangible employment actions against the victim." If no
tangible employment action is taken, the company may escape liability by establishing it
exercised reasonable care to prevent and correct any harassing behavior and the complainant
unreasonably failed to take advantage of the preventive or corrective opportunities the company
offered.

Further, the high court rejected the position taken by several federal appellate courts and the
EEOC that "supervisors" include those whom the employer vests with authority to direct and
oversee the victim's daily work.