

# Ohio Supreme Court Limits Public Sector Supervisor Liability

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The liability to private-sector employers for the conduct of their supervisors is always an important issue in our world. Well, it's no different in the public sector, either, which is why the recent decision of the *Ohio Supreme Court in Hauser v. Dayton Police Department* is noteworthy.

In *Hauser*, Dayton, Ohio police officer Anita Hauser sued the Dayton Police Department and her supervisor, E. Mitchell Davis, for age and gender discrimination. By way of background, political subdivision employees are generally immune from civil liability when they act within the course and scope of their employment. Typically, to sue a government employee, a plaintiff must point to a statutory exception that allows a public employee to be sued.

In this instance, the plaintiff relied upon R.C. 2744.03(A)(6)(c), which states that a political subdivision employee is not entitled to immunity if a section of the Ohio Revised Code expressly imposes civil liability upon the employee. The plaintiff contended that a different section of the Code, R.C. 4112.02 – the Ohio Civil Rights Act, which forbids employers from discriminating against employees based on a number of protected characteristics – expressly imposes civil liability on employees engaged in discriminatory acts.

The Court disagreed with the plaintiff's argument and found that the Ohio Civil Rights Act does not expressly impose liability on public sector employees for discrimination. The Court's decision turned on how it interpreted the definition of "employer." The Act's definition of employer includes "any person acting in the interest of an employer," and a prior Ohio case, *Genaro v. Cent. Transport. Inc.*, had previously interpreted this language to impose civil liability upon supervisors and managers in discrimination cases.

However, the Ohio Supreme Court disagreed. Instead, the Court looked to the legislative intent and concluded that the Act intended to impose liability on the employer for discriminatory conduct, but not on individual employees. The Court distinguished *Genaro* because *Genaro* involved a private employer, so the precise issue of political subdivision immunity was not at issue in that case.

After *Hauser*, public employers in Ohio should be aware that even though supervisors and managers are immune from liability for discrimination, public employees may still pursue these claims against the employer. Additionally, while this decision to limit supervisor liability does not currently extend to private employers, it is possible that the Court could reconsider whether supervisors should be held personally liable for discriminatory conduct in those settings as the law currently stands. While the

Court did go out of its way to distinguish Genaro – a decision which supported the concept of employer liability for supervisor conduct in the private sector – and that suggests the Court may not be interested in changing course on that question anytime soon, these issues remain worth watching because of how often these concepts come into play in the employment arena, and because of how much is at stake when they do.

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