6-2000

Supervisors Individually Liable Under the Iowa Civil Rights Act

Tory L. Lucas
Liberty University, tllucas3@liberty.edu

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Until recently, the Iowa Supreme Court had never squarely decided whether a supervisory employee could be subjected to individual liability for employment discrimination under the Iowa Civil Rights Act of 1965. On October 1999, the Court definitively ruled in Vivian v. Madison “that the Iowa Civil Rights Act does authorize the subjecting of a supervisory employee to individual liability.”

In Vivian, Wendy Vivian filed a multi-count complaint in federal court against her employer, United Parcel Service, and her supervisor, Gerry Madison, alleging racial and sexual harassment in violation of Title VII of the Civil Rights Act of 1964 (Title VII) and the Iowa Civil Rights Act of 1965 (ICRA). Defendant Madison moved to dismiss the complaint against him on the ground that supervisory employees could not be held individually liable under the Iowa Civil Rights Act. A later noting that the federal courts in Iowa were split over the issue of supervisor liability under the ICRA and without unqualified precedent from the Iowa Supreme Court on which to base its decision, the United States District Court for the Southern District of Iowa, Judge Ronald E. Longstaff, certified the following question to the Iowa Supreme Court: “Is a supervisory employee subject to individual liability for unfair employment practices under Iowa Code section 216.6(1) of the Iowa Civil Rights Act?”

The Court gave a clear yes to the certified question. In determining that supervisory employees are subject to individual liability for unfair employment practices under the ICRA, the Iowa Supreme Court simply read and applied the statute’s plain language. In reaching its holding, the Court distinguished the ICRA from Title VII, the legislation upon which the ICRA was modeled.

The Plain Language

The Iowa Supreme Court and the federal courts in Iowa have consistently analyzed the ICRA against the backdrop of federal law. When the debate turned to whether supervisors can be individually liable under the ICRA, however, federal law provided an unnecessary impediment as opposed to analytical guidance. As the Iowa Supreme Court stated in Vivian, Title VII “differs from the ICRA in several key respects.”

Iowa Code section 216.6(1)(a), entitled Unfair Employment Practices, makes it “an unfair or discriminatory practice for any person to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the age, race, creed, color, sex, national origin, religion, or disability of such applicant or employee.”

Person, as used in the ICRA, “means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.”

The ICRA also states that “[i]t shall be an unfair or discriminatory practice for: (1) A ny person to intentionally aid, abet, compel, or coerce another person to engage in any of the practices declared unfair or discriminatory by this chapter. (2) A ny person to discriminate or retaliate against another person in any of the rights protected against discrimination by this chapter because such person has lawfully opposed any practice forbidden under this chapter, obeys the provisions of this chapter, or has filed a complaint, testified, or assisted in any proceeding under this chapter.”

Finally, the ICRA’s relief mechanism, section 216.15, provides that “[a]ny person claiming to be aggrieved by a discriminatory or unfair practice may . . . file with the [civil rights] commission a . . . complaint which shall state the name and address of the person [or] employer . . . alleged to have committed the discriminatory or unfair practice of which complained.”

As seen by the ICRA’s clear language, a discrimination claim can be brought under the ICRA against any person or employer who discriminates in an employment context. The ICRA simply does not require the person to be an employer. In fact, the ICRA expressly distinguishes between person and employer throughout the statute. The ICRA separately defines person and employer, revealing that person and employer are two distinct terms.

As discussed above, a number of sections apply to persons. Similarly, the ICRA also has sections that apply to employers.

As the Iowa Supreme Court said, rules of statutory construction should "be
applied only when the explicit terms of a statute are ambiguous.” In the ICRA’s case, the Iowa Legislature chose to use both person and employer. Person and employer can, in no way, be read to mean exactly the same thing. Therefore, the use of the term person in Iowa Code section 216.6(1)(a) does not, and cannot, mean employer as used in the statute. A though it sounds redundant and even patronizing, the term person means person as defined in the statute.

When the term person is used in the statute, as opposed to employer, the legislature’s clear intent is that it meant to use person, as opposed to employer. As the Iowa Supreme Court has said, “The express mention of one thing in a statute implies the exclusion of others.” When the Iowa Legislature used the term person in sections 216.2(11), 216.6(1), 216.11 and 216.15, instead of the term employer, which was used elsewhere in the statute, we must interpret the statute based on that usage.

The Iowa Supreme Court stated that “it is not the province of the court to speculate as to probable legislative intent without regard to the wording used in the statute, and any determination must be based upon what the legislature actually said, rather than what it might or should have said.” A though one could most certainly presume that the Iowa Legislature intended to hold only employers liable for employment discrimination – as Title VII does – the Iowa Legislature did not enact legislation that said so.

Finally, the ICRA itself mandates that it “shall be construed broadly to effectuate its purposes.” Similarly, the Iowa Supreme Court has said to “look to the object to be accomplished and the evils and mischiefs sought to be remedied in reaching a reasonable or liberal construction which will best effect its purpose rather than one which will defeat it.”

This statutory construction principle, along with the ICRA’s own rule of construction and plain language, cries out for individual liability. If person were interpreted to mean employer and supervisors were not held individually liable under the ICRA, then the net result of such an interpretation would be an extremely narrow and restrictive construction of the ICRA. Clearly, this would violate cardinal rules of statutory construction and rupture the ICRA’s own plain language and rule of construction.

If the ICRA’s goal is to stamp out employment discrimination, how best could the Iowa Legislature accomplish this goal? As seen from the ICRA’s plain language, providing a remedy against those individuals who actually discriminate would effectuate the ICRA’s purposes far easier than attempting to use agency principles to hold the employer liable.

The Stumbling Block

The biggest stumbling block to correctly deciding whether supervisors can be individually liable under the ICRA has been an over-reliance on Title VII. A simple reading of Title VII alongside the ICRA reveals that the two statutes simply do not say, and thus cannot mean, the same thing when addressing the issue of supervisor liability.

Title VII of the Civil Rights Act of 1964 makes it an “unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”

Title VII defines employer as “a person engaged in an industry affecting commerce who has fifteen or more employees . . . and any agent of such a person.”

Title VII defines person as including “one or more individuals, . . . partnerships, associations, corporations, legal representatives, . . . trusts, . . . trustees, . . . or receivers.”

Thus, only employers can be held liable for employment discrimination under Title VII’s plain language. Unlike the ICRA, Title VII’s plain language simply does not answer the question of whether a supervisory employee can be held individually liable for employment discrimination, though. The reason is Congress’ use of the phrase “any agent of such a person” when defining employer. Thus, the debate has raged over whether Congress was simply codifying respondent superior in Title VII or whether it intended to hold supervisory employees individually liable.

While the U.S. Supreme Court has not ruled on whether individuals can be held liable under Title VII, the vast majority of federal courts to hear the question have decided that supervisory employees are not liable under Title VII.

Given this backdrop of federal litigation under Title VII, Iowa federal district courts encountered litigation over whether supervisory employees can be held individually liable for employment discrimination under the ICRA. As seen in Bales v. Wal-Mart Stores, Inc., the United States District Court for the Southern District of Iowa, Judge Celeste F. Bremer, compared Title VII and its use of the term employer with the ICRA and its use of the term person.

Notwithstanding the glaring differences between the two statutes, the Court allowed itself to use Title VII as strong guidance for interpreting the ICRA.

A nother Title VII section may also be contributing to the over-reliance on federal law when interpreting the ICRA. As quoted above, Title VII contains a small-business exclusion for employers with fewer than fifteen employees. The ICRA also contains a small-business
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differs from the ICRA in the application of the small-business exclusion. Using Title VII as guidance when analyzing either issue makes little sense.\textsuperscript{33} Although the courts have not relied on the small-business exclusion as a reason to hold that individuals cannot be held liable under the ICRA for employment discrimination, the courts should make sure that they do not use Title VII as guidance when interpreting the ICRA’s use of the small-business exclusion.

The bottom line is that Title VII’s small-business exclusion should never be used to wrongly interpret the ICRA’s small-business exclusion. Over-reliance on Title VII should not continue to be a stumbling block to correctly deciding cases under the ICRA.

The Confusion

In addition to the confusion caused by relying on Title VII at the expense of the ICRA’s plain language, the earliest problem began in 1991 when the Court said regarding Iowa Code section 601A.6(1)(a)\textsuperscript{34}: “Obviously, only the employer, and not third parties, can discharge an employee. Moreover, we hold that the language “otherwise discriminate in employment” pertains only to employers. Therefore, acts of third parties are not “unfair or discriminatory practices” for purposes of section 601A.16(1), and actions against such third parties are not preempted by chapter 601A.”\textsuperscript{35} Although the Court seemed to transform the ICRA’s use of the term person into the use of the term employer, the Court apparently wanted to save an otherwise time-barred complaint from being preempted as an untimely civil rights claim.

In a 1997 case, the Court again discussed the use of the term person in the ICRA. This time the Court said that the use of the term person instead of employer “extends the prohibition of the [discriminatory] act to some situations in which a person guilty of discriminatory conduct is not the actual employer of the person discriminated against.”\textsuperscript{36} Once the Court noted the difference between person and employer and stopped relying on Title VII on this issue, the ICRA’s plain language started to shine through brightly. Now that the Court has issued its Vivian\textsuperscript{37} opinion, supervisors can be held individually liable for their discriminatory acts under Iowa Code section 216.6(1)(a).

The Aftermath

Now that the question of whether only employers can be held liable under the ICRA has been answered, litigation may expand to include lawsuits against individual employees. In addition, I believe we also may see employment discrimination suits against employers with fewer than four employees because the ICRA’s small-business exclusion does not apply to section 216.6(1)(a) or section 216.15, the remedies section. A’s term person includes partnerships, associations and corporations, an unfair employment practice under section 216.6(1)(a) by one of these entities—even if they employ less than four employees—can result in an employment discrimination suit against them under section 216.15. The small-business exclusion, as written, simply does not apply to these situations.

* Tory L. Lucas, a captain in the United States Air Force, is the Deputy Staff Judge Advocate at Arnold Air Force Base, Tennessee. He earned a B.A., Magna Cum Laude, at Culver-Stockton College and his J.D., Summa Cum Laude, at Creighton University. Before entering military service, Tory was a litigation associate with Klass, Hanks, Stoos, Stoik, Mugan, Villone & Phillips in Sioux City, Iowa.

This article expresses the views of Tory L. Lucas and does not reflect or represent the views of the Department of Defense, the United States Air Force or The Iowa State Bar Association.

\textsuperscript{33} VIVIAN V. MADISON, 601 N.W.2d 872, 872 (Iowa 1999).
\textsuperscript{34} U.S.C. § 2000e at sec.
\textsuperscript{35} Iowa Code chapter 216.
\textsuperscript{36} Vivian, 601 N.W.2d at 872.
\textsuperscript{37} Id.
\textsuperscript{37} Id. at 872-73.
\textsuperscript{37} Id. at 873. In all fairness, the Court did not simply read the ICRA and distinguish it from Title VII. The Court spent seven pages discussing two of its prior decisions, the ICRA’s meager legislative history, a recent Iowa federal district court decision holding that no individual liability could attach under the ICRA, California cases involving their Fair Housing and Employment Act, and the New York Human Rights Law. Although it made for interesting read-
ing, the ICRA’s plain language and traditional statutory construction principles would have allowed the Court to rule after two pages that supervisory employees can be held individually liable under Iowa Code section 216.6(1).


Iowa Code § 216.6(1)(a) (emphasis added).

Id. at § 216.2(11).

Id. at § 216.11 (emphasis added).

Id. at § 216.15 (emphasis added); see also id. at § 729.4(1) & (3) (criminal statute making it a simple misdemeanor for a “person” or employer [to] discriminate in the employment of individuals because of race, religion, color, sex, national origin, or ancestry) (emphasis added).

Id. at § 216.2(7) (defining employer as “the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and every other person employing employees within the state”).

See, e.g., Iowa Code § 216.6(1)(c) (“It shall be an unfair or discriminatory practice for any employer . . . to directly or indirectly advertise or in any other manner indicate or publicize that individuals of any particular age, race, creed, color, sex, national origin, religion, or disability are unwelcome, objectionable, not acceptable, or not solicited for employment or membership unless based on the nature of the occupation.”) (emphasis added).

Marcus v. Young, 538 N.W.2d 285, 289 (Iowa 1995) (citations omitted); see also Franklin Mfg. Co. v. Iowa Civil Rights Comm’n, 270 N.W.2d 829, 832 (Iowa 1978) (citations omitted) (“Where language is clear and plain, there is no room for construction.”).

As seen already, the definition of person does not include employer. Iowa Code § 216.2(11).

However, the term employer includes “every other person employing employees within the state.” Id. at § 216.2(7) (emphasis added).


The Iowa Supreme Court has also stated that when “considering legislative enactments we should avoid strained, impractical or absurd results.” Franklin Mfg. Co., 270 N.W.2d at 831 (citations omitted). If person is read out of the statute in order for it to mean employer, we will have completely strained the plain language in order to reach an absurd result.

Marcus, 538 N.W.2d at 289; see also Hatter, 414 N.W.2d at 337.

Iowa Code § 216.18.

Marcus, 538 N.W.2d at 289 (citations omitted); Franklin Mfg. Co., 270 N.W.2d at 831.

Again, we can make assumptions and presumptions all day long about what the Iowa Legislature meant to do or what they should have done, but what they actually did in the ICRA is clear. Person and employer are separate and distinct entities under the ICRA. Person includes individuals, which must include supervisors. By interpreting the ICRA this way, we give meaning to all the terms used in the statute and satisfy the statute’s own rule of construction.


Id. at § 2000e(b).

Iowa Code § 216.6(1)(a).

I understand that the ICRA was enacted after Title VII and most likely was meant to mimic the federal legislation. Notwithstanding, the Iowa Legislature did not mimic the federal legislation. If the Legislature indeed intended to mimic Title VII, they could have copied Title VII to show that intent. They did not.

“Chapter 601A of the Iowa Code was transferred to chapter 216 in Code 1993.” Vivian, 601 N.W.2d at 875.


Sahai v. Davies, 557 N.W.2d 898, 901 (Iowa 1997); see, e.g., Weeks v. Baxter, 585 N.W.2d 908, 910 (Iowa 1998).

Iowa Code § 216.6(1’a) because the “statute is abundantly clear on this point”).