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Employer Liability for Sexual Harassment under Title VII

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Topic Overview

Overview

Sexual harassment in the workplace occurs when an employer subjects an employee to unwelcome verbal, nonverbal, or physical conduct of a sexual nature that affects the employee's employment, interferes with the employee's work performance, or creates a hostile work environment. Victims of sexual harassment may be anyone affected by the unwelcome conduct or statements.

Civil rights and employment laws in the United States protect both men and women from sexual harassment in the workplace. Federal and state laws prohibit also prohibit employer from retaliating against an employee who files a discrimination charge under those laws.

Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees based on their race, color, religion, sex or national origin. The prohibition against sex discrimination encompasses sexual harassment. The Act applies to most employers with 15 or more employees, including the federal government, state and local governments, labor organizations, and employment agencies.

Under Title VII, employers also may not retaliate against an individual for refusing to submit to sexual harassment or filing discrimination charges and participating in related proceedings against an employer. Retaliation is unlawful whether the employee is suspended, demoted, fired, or any other action that negatively affects an employee's job treatment or status.

In 1972, the Congress passed the Equal Employment Opportunity Act which created the Equal Employment Opportunity Commission (EEOC) and empowered it to enforce Title VII of the Civil Rights Act of 1964. The EEOC created regulations defining and prohibiting sexual harassment as a form of sex discrimination, which may be found at 29 C.F.R. Part 1604.11

Quid Pro Quo Sexual Harassment

These regulations define two types of sex discrimination. The first, quid pro quo, occurs when an employer requires an employee to submit to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature as a condition of employment, either implicitly or explicitly. This occurs, for example, if an employer forces an employee to engage in sexual conduct to keep his or her job. Quid pro quo harassment also occurs when another employee makes decisions about the terms and conditions of an employee's job based on that employee's submission to verbal, nonverbal or physical conduct of a sexual nature. Quid pro quo harassment as a form of sex discrimination was first recognized in *Williams v. Saxbe*, 413 F.Supp. 654 (1976).

Hostile Work Environment

Another type of sexual harassment prohibited by federal law is that which creates a hostile work environment, which occurs when unwelcome verbal or physical conduct of a sexual nature unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment. Anyone in a workplace can create a hostile work environment, including co-workers and customers of a business—not just the employer or a supervisor.

The Supreme Court recognized this form of sexual harassment as a violation of Title VII of the Civil Rights Act of 1964 in Vinson v. Meritors Savings Bank, 477 U.S. 57 (1986). In that case, the Court established the standards for by which courts now evaluate whether conduct was unlawful and when an employer will be held liable. Courts must consider the specific circumstances of each case—what alleged incidents occurred, where, how often—to determine whether the conduct was frequent and serious and an employee was in fact subject to a hostile work environment. Where a hostile environment is found, the unwelcome sexual conduct is a regular part of the workplace; a single incident usually is not enough for a court to find that a hostile work environment exists.

Additional Protections Against Sexual Harassment

The Civil Rights Act of 1991 provided employees with additional protections against sexual harassment. It allows courts to award punitive damages in cases of intentional discrimination, rather than limiting victims to economic damages they have incurred. The Act also allows an award of attorneys' fees and the possibility of jury trials under certain circumstances.

Class action sexual harassment cases may now be filed, in the wake of *Jenson v. Eveleth Taconite Co*. A 2002 book, *Class Action,* was made into a film, *North Country*, which portrays the events surrounding this case, which ended in a $3.5 million settlement for the female mine worker victims of sexual harassment.

Employers may be held liable for sexual harassment by supervisors of employees, the Supreme Court held in Burlington Industries v. Ellerth, 524 U.S. 742 (1998), and Faragher v. City of Boca Raton, 524 U.S. 775 (1998). Whether or not an employer is held liable for sexual harassment committed by its employee depends upon whether the employer took reasonable measures to prevent, and immediately stop, any unwelcome sexual conduct within the workplace.

State Laws

Some states prohibit sex discrimination, specifically sexual harassment, in the workplace and require employers to institute workplace anti-harassment programs. Employers must comply with all applicable state and federal laws. Specific regulations and rights vary from state to state and may be enforced by different state and local agencies, including human rights commissions, labor and employment agencies. State laws may afford employees greater protections than federal laws; in such cases, state law is applied instead of federal law.

Scope of the Guide

This guide provides an overview of the law surrounding employer liability for sexual harassment under Title VII. The resources provided in this guide include helpful laws, and primary and secondary materials. This research guide is intended to assist attorneys with little or no familiarity with this subject matter in gaining a better understanding of the relevant law.

About the Author

Brenna Mengert graduated from Georgia State College of Law in May of 2010. She has interned in Constitutional Law, Medical Malpractice, and Personal Injury law, but upon graduation wants to move into the area of employment and labor law. Before attending law school, Ms. Mengert received her Bachelors Degree in History at the University of North Carolina at Wilmington where she graduated with honors.

Disclaimer

This research guide is a starting point for a law student or an attorney to research the doctrine of inequitable conduct and its intersection with attorney-client privilege. This is a very active area of federal law, and it is imperative to Shepardize or KeyCite all cases and statutes before relying on them. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law library or consult an attorney.

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Primary Sources

Supreme Court Cases

Meritor Savings Bank, FSB v. Vinson

477 U.S. 57 (1986)

The question in this case is whether the Civil Rights Act prohibits the creation of a "hostile environment" or is it limited to tangible economic discrimination in the workplace? The Court held that the language of Title VII was "not limited to 'economic' or 'tangible' discrimination," finding that Congress intended ""to strike at the entire spectrum of disparate treatment of men and women' in employment. . ." The Court noted that guidelines issued by the EEOC specified that sexual harassment leading to noneconomic injury was a form of sex discrimination prohibited by Title VII. The Court recognized that plaintiffs could establish violations of the Act "by proving that discrimination based on sex has created a hostile or abusive work environment." The Court declined to rule on the degree to which businesses could be liable for the conduct of specific employees.

Harris v. Forklift Systems, Inc.

510 U.S. 17 (1993)

The plaintiff allged that the president of Forklift Systems had engage din carious forms of sexual harassment. The case therefore presented no question of vicarious liability of the employer. The only questions was whether the acts alleged were sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. This case reaffirms the standard stated in Meritor which takes a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury. The court said that "mere utterence of an ... epithet which engenders offensie feelings in an employee, does not sufficiently affect the conditions of employment to implicate Title VII. Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment, an environment that a reasonable person would find hostile or abusive, is beyond Title VII's purview. If the victim does not subjectively perceive the environment to be abusive the conduct has not actually altered the conditions of the victim's employment and there is no Title VII violation.

Oncale v. Sundowner Offshore Services, Inc.

523 U.S. 75 (1998)

This case presents the question of whether workplace harassment can violate Title VII's prohibition against discrimination because of sex, when the harasser and the harassed employee are of the same sex. Title VII's prohibition of discrimination "because of sex" protects men as well as women. Thus, sexual discrimination consisting of same-sex sexual harassment is actinable under Title VII.

Faragher v. City of Boca Raton

524 U.S. 775 (1998)

The Supreme Court explained that TItle VII does not prohibit genuine but innocuous differences in the ways men nd women routinely interact with each other. The court makes clear that a finding of sexual harassment in the workplace requires something more. The employer in Faragher subjected his female employees to offensive touching, lewd remarks and the use of offensive language to talk about women which the court found did rise to the level of hostile work environment sexual harassment.

Burlington Industries v. Ellerth

524 U.S. 742 (1998)

Respondent Kimberly Ellerth quit her job after 15 months as a salesperson in one of petitioner Burlington Industries' many divisions, allegedly because she had been subjected to constant sexual harassment by one of her supervisors, Ted Slowik. Slowik was a mid-level manager who had authority to hire and promote employees, subject to higher approval, but was not considered a policy-maker. Against a background of repeated boorish and offensive remarks and gestures allegedly made by Slowik, Ellerth places particular emphasis on three incidents where Slowik's comments could be construed as threats to deny her tangible job benefits. Ellerth refused all of Slowik's advances, yet suffered no tangible retaliation and was, in fact, promoted once. Moreover, she never informed anyone in authority about Slowik's conduct, despite knowing Burlington had a policy against sexual harassment. In filing this lawsuit, Ellerth alleged Burlington engaged in sexual harassment and forced her constructive discharge, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq*. The District Court granted Burlington summary judgment. The Seventh Circuit en banc reversed in a decision that produced eight separate opinions and no consensus for a controlling rationale. Among other things, those opinions focused on whether Ellerth's claim could be categorized as one of *quid pro quo* harassment, and on whether the standard for an employer's liability on such a claim should be vicarious liability or negligence.

Held: Under Title VII, an employee who refuses the unwelcome and threatening sexual advances of a supervisor, yet suffers no adverse, tangible job consequences, may recover against the employer without showing the employer is negligent or otherwise at fault for the supervisor's actions, but the employer may interpose an affirmative defense.

District and Circuit Court Cases

First Circuit

Chaloult v. Interstate Brand Corp., 540 F.3d 64 (1st Cir. 2008)

Former employee filed suit against her former employer under Title VII, alleging that she suffered sexual harassment by her supervisor during the six months prior to her quitting her job. Summary judgment was granted for the employer holding that the employer was not vicariously liable for the alleged sexual harassment.

Lee-Cresp v. Schering-Plough Del Caribe Inc., 354 F.3d 34 (1st Cir. 2003)

Former employee sued employer, alleging sexual harassment in violation of Title VII. The court held that the supervisor's alleged sexual harassment did not result in a denial of employee's transfer request for reassignment, so that employer could not be liable for those actions; the former employee failed to prove constructive discharge; and employee failed to prove she was subject to a severe or pervasive hostile work environment by the behavior or her supervisor.

Second Circuit

Agosto v. Correctional Officers Benev. Ass'n, 107 F. Supp 2d 294 (S.D. N.Y. 2000)

A union member filed action seeking redress for alleged discrimination and retaliation by her union in violation of Title VII. Upon the union's motion for summary judgment to dismiss the entire action, the District Court held that 1) the union's refusal to process member's sexual harassment complaint against employer was a valid basis for a Title VII claim against the union based on breach of its duty of fair representation; 2) there were issues of material fact bearing on liability of the union on Title VII claim for causing or attempting to cause employer to discriminate against the employee and 3) the summary judgment in favor of union was precluded on the union member's retaliation claim.

Early v. Wyeth Pharmaceuticals, Inc. 603 F. Supp. 2d 556 (S.D. N.Y. 2009)

An African-American formerly employed as pharmaceutical operator in consumer health division of company engaged in development and manufacture of pharmaceutical health care and animal products brought action pursuant to § 1981 and New York State Human Rights Law (NYSHRL) against former employer, production supervisor, and department head and/or associate director, alleging she suffered adverse employment actions, constructive termination, and retaliation for complaints of race-based discrimination and racially hostile work environment. Defendants counterclaimed alleging fraud in the inducement and unjust enrichment. Defendants moved for summary judgment, and plaintiff cross-moved for summary judgment on counterclaims.

The District Court held (1) employee's hostile work environment claim was timely under continuing violation doctrine; (2) supervisor's alleged threat to suspend employee based on number of paperwork errors she had made was not "adverse employment action" that would support disparate treatment claim; (3) no atmosphere of adverse employment actions was created by unfulfilled threat, along with incorrect overtime charges; (4) employee established prima facie case of retaliation in connection with threat to her job due to paperwork errors, but employer's proffered reason was legitimate, nonretaliatory, and nonpretextual; (5) employee was not subjected to hostile work environment based on race; (6) employee was not constructively discharged; (7) as for claims against individual defendants under NYSHRL, they did not engage in any action that either aided or abetted employer in violating employee's rights; and (8) counterclaims were moot. Defendants' motion granted; plaintiff's cross-motion denied.

Third Circuit

Anderson v. Deluxe Homes of PA, Inc., 131 F. Supp. 2d 637 (M.D. Pa 2001).

Former employee, who had done factory work in employer's modular home construction facility, sued employer under Title VII and for common law intentional infliction of

emotional distress. Employer moved for summary judgment. The District Court held that: (1) there were fact issues whether hostile work environment was created, in violation of Title VII, through alleged unwanted sexual attention paid to former employee by two male employees; (2) fact issues as to whether former employee reasonably feared loss of job if she complained precluded summary judgment against her for failing to utilize employer's sexual harassment complaint procedures; (3) fact issues regarding management status of employee to whom former employee allegedly complained precluded determination that knowledge of harassment was not communicated to employer; (4) there were fact issues whether employer had actual or constructive knowledge of harassment; (5) there were fact issues whether firing of former employee was in retaliation for harassment complaints rather than work competence; and (6) employer had not engaged in intentional infliction of emotional distress.

Fourth Circuit

Brown v. Henderson, 155 F. Supp. 2d 502 (M.D. N.C. 2000)

A female employee of the United States Postal Service (USPS) brought action against Postmaster General, alleging sexual harassment and retaliation claims under Title VII. Postmaster General moved for summary judgment. The District Court, held that: (1) USPS established affirmative defense to employee's sexual harassment claims, and (2) temporary reduction in employee's pay did not establish retaliation claim.

McDougal-Wilson v. Goodyear Tire and Rubber Co., 427 F. Supp. 2d 595 (E.D. N.C. 2006)

A former employee, an African-American female store manager for automotive service chain, sued her former employer under § 1981, Title VII, and North Carolina law, alleging discrimination based on race, gender and pregnancy with respect to wages, promotion, discipline, and termination, retaliation and creation of hostile work environment, negligent infliction of emotional distress, negligent supervision, and wrongful discharge in violation of North Carolina public policy. Employer moved for summary judgment on all claims.

The District Court held that: (1) employee failed to establish prima facie case of race or sex-based wage discrimination; (2) employee failed to establish prima facie case of sex or race discrimination regarding her denial of promotions; (3) employer's proffered reason for not promoting her, other candidates' better qualifications, was legitimate, nondiscriminatory, and nonpretextual; (4) employee failed to establish prima facie case of discrimination in the enforcement of disciplinary measures; (5) employee failed to establish prima facie case of discriminatory discharge based on race, sex or pregnancy; (6) six-year delay between employee's sexual harassment report and her termination doomed her ability to prove causal connection needed to establish prima facie case of retaliation; (7) fact issues precluded summary judgment for employer on hostile work environment claim based on *Faragher-Ellerth* affirmative defense; (8) court would not resolve employer's laches defense to hostile work environment claim on motion for summary judgment; and (9) employer was entitled to summary judgment on claims of negligent infliction of emotional distress and wrongful discharge, but court would defer ruling on negligent supervision claim until it determined whether laches barred the sexual harassment claim. Motion granted in part and denied in part.

Fifth Circuit

Ackel v. National Communications, Inc., 339 F.3d 376 (5th Cir. 2003)

Female former employees brought Title VII supervisor sexual harassment and retaliation action against employer. The United States District Court for the Western District of Louisiana granted summary judgment in favor of employer. Former employees appealed. The Court of Appeals held that: (1) employee who was allegedly replaced and transferred from her position as a result of a supervisor's favoritism for another female employee and allegedly terminated for complaining about her replacement's favorable treatment could not show that she suffered discrimination based upon gender; (2) genuine issue of material fact precluded summary judgment; and (3) employees failed to establish prima facie retaliation claims.

Marroquin v. City of Pasadena, 524 F. Supp. 2d 857 (S.D. Tex. 2007)

A city employee brought an action under Title VII alleging a hostile work environment and retaliation claim. The City moved for summary judgment. The court held that there were issues of fact as to whether the supervisor’s physical and verbal abuse was motivated by the employee’s national origin; the city failed to establish the Ellerth/Faragher affirmative defense; and the employee’s transfer was sufficiently adverse to support his Title VII claim.

Sixth Circuit

Barrett v. Whirlpool Corp., 556 F.3d 502 (6th Cir. 2009)

Caucasian employees of Tennessee appliance manufacturing facility filed suit against employer, alleging that, as result of their association with and advocacy on behalf of their African-American coworkers, they were subject to hostile work environment in violation of Title VII and § 1981 and retaliation in violation of Title VII. The United States District Court for the Middle District of Tennessee, granted summary judgment. Employees appealed.

The Court of Appeals held that: (1) one employee's Title VII claims were time-barred; (2) alleged harassment was insufficiently severe or pervasive to establish prima facie Title VII hostile work environment claim; (3) employee did not establish Title VII retaliation claim based on employee's advocacy for African-American coworkers; and (4) fact issues precluded summary judgment, in one employee's hostile work environment claim. Affirmed in part, vacated in part, and remanded.

Yates v. Avco Corp., 819 F.2d 630 (6th Cir. 1987)

Two female employees brought sexual harassment action against employer and supervisor. The United States District Court for the Middle District of Tennessee, John T. Nixon, J., entered judgment for employees and employer appealed. The Court of Appeals, Boyce F. Martin, Jr., Circuit Judge, held that: (1) evidence was sufficient to support finding that employer was liable for sexual harassment perpetrated by its supervisor; (2) sexual harassment claimant did not adequately prove she was constructively discharged from her employment; and (3) sexual harassment claimant failed to establish that company retaliated against her.

Seventh Circuit

Baskerville v. Culligan Intern. Co., 50 F.3d 428 (7th Cir. 1995)

Employee brought action under Title VII for sexual harassment. The United States District Court for the Northern District of Illinois entered judgment, consistent with jury award, for employee, and appeal was taken. The Court of Appeals held that: (1) incidents spread over seven months did not constitute sexual harassment because supervisor never touched employee or invited employee to have sex with him or to go out on date with him, and (2) even if supervisor's remarks could be thought to constitute harassment, employer took all reasonable steps to protect employee from supervisor.

E.E.O.C. v. Caterpillar Inc., 628 F. Supp. 2d 844 (N.D. Ill. 2009)

Equal Employment Opportunity Commission (EEOC) brought action against company that manufactured and assembled large earth-moving equipment on behalf of six current employees of company and one former employee for sexual harassment and retaliation which allegedly occurred at one of company's facilities. After the District Court granted company's motion for summary judgment as to some of those claims, case proceeded to trial on sexual harassment claims brought on behalf of two employees, and on former employee's claims for sexual harassment and retaliatory discharge. Following bench trial, the District Court held that: (1) supervisor's alleged conduct was not severe or pervasive enough to create hostile work environment; (2) independent contractor's vague allegations were insufficient to place company on notice of supervisor's alleged sexual harassment; (3) safety supervisor was terminated due to unprofessional behavior and poor performance, rather than her rejection supervisor's alleged sexual advances; (4) report that foreman made assembly line supervisor uncomfortable by sharing intimate details about his personal life was insufficient to provide notice to company of any sexually inappropriate behavior; (5) company could not be held liable for foreman's alleged sexual harassment; (6) security guard's conduct was sufficiently severe to alter welder's work environment, as supported hostile work environment claim; (7) conversation between labor relations assistant and welder put company on notice of guard's sexually harassing conduct; but (8) company acted reasonably in response to welder's complaint, and thus could not be liable for guard's conduct.

Murray v. Chicago Transit Authority, 252 F.3d 880 (7th Cir. 2001)

Female employee, a corporate senior vice-president of legal affairs, brought Title VII action against employer and section 1983 claim against employer's president, alleging that president sexually harassed her and retaliated against her for refusing his sexual advances. Following a series of evidentiary rulings unfavorable to employee, and at the conclusion of employee's case in chief, defendants moved for judgment as a matter of law. The United States District Court for the Northern District of Illinois granted the motion, and employee appealed. The Court of Appeals held that: (1) isolated and relatively minor actions that employee complained of, including president's refusal to approve her travel plan to conference, did not constitute “tangible employment actions,” for purposes of employee's sexual harassment claim; (2) actions by employer's chairman of the board and general counsel did not constitute “tangible employment actions” related to president's alleged harassment; (3) employee failed to establish a legally sufficient basis for a reasonable jury to conclude that president sexually harassed her; (4) because employee failed to demonstrate that she suffered an adverse employment action, she failed to establish a prima facie case of discriminatory retaliation; and (5) because the district court's evidentiary rulings related to employee's damages, they were moot.

Eighth Circuit

Adams v. O’Reilly Automotive, Inc., 538 F.3d 926 (8th Cir. 2008)

Employee sued employer under Title VII, alleging sexual harassment by supervisor. The United States District Court for the Western District of Missouri entered summary judgment for employer. Employee appealed.

The Court of Appeals held that: (1) employer's anti-harassment policy was reasonable and properly enforced, as required for employer to establish *Ellerth/Faragher* defense, and (2) employee unreasonably failed to report sexual harassment, as required for employer to establish such defense.

Bales v. Wal-Mart Stores, Inc., 143 F.3d 1103 (8th Cir. 1998)

Former employee brought Title VII sexual harassment action against former employer and former supervisor. Following jury verdict against former employer and former supervisor, the United States District Court for the Southern District of Iowa entered judgment against former employer but entered judgment as matter of law as to judgment against former supervisor in his individual capacity. All parties appealed. The Court of Appeals Circuit Judge, held that: (1) finding that supervisor's behavior toward employee was unwelcome was supported by sufficient evidence; (2) finding that supervisor's behavior was based on sex was supported by sufficient evidence; (3) finding that incidents of supervisor's harassing behavior were severe and pervasive was supported by sufficient evidence; (4) finding that employer knew or should have known of supervisor's sexually harassing behavior and failed to take proper remedial action was supported by sufficient evidence; and (5) supervisor could not be held liable in his individual capacity.

Ninth Circuit

Bauer v. Carson Tahoe Hosp., 212 Fed. Appx 654 (9th Cir. 2006)

A female employee brought a Title VII gender-hostile work environment claim against employee. The United States District Court for the District of Nevada granted summary judgment to the employer and the employee appealed. The Court of Appeals held that the employee did not rebut the employer’s prima facie showing as to the Faragher/ Ellerth defense.

Connor v. Micron Technology, Inc., 341 Fed. Appx. 302 (9th Cir. 2009)

Terminated employee sued her former employer and unnamed individuals under Title VII, alleging sexual harassment by her supervisor and retaliation for complaining of same. The United States District Court for the District of Idaho granted summary judgment for employer. Employee appealed.

The Court of Appeals held that: (1) because alleged harassment did not culminate in a tangible employment action, employer could rely on Faragher affirmative defense to vicarious liability therefore; (2) employee failed to establish prima facie case of retaliation; and (3) employer's proffered reason for employee's termination, her failure to complete required employee training, was legitimate and nonretaliatory and was not shown to be pretextual.

Rasmusson v. Copeland Lumber Yards., Inc., 988 F. Supp. 1294 (D. Nev. 1997)

Male former employee brought Title VII action against employer alleging sex discrimination by male supervisor. Employer moved for summary judgment. The District Court held that: (1) same gender sexual harassment is actionable under Title VII; (2) genuine issues of material fact precluded summary judgment as to whether male former employee was harassed by male supervisor because of his sex or gender; (3) genuine issues of material fact precluded summary judgment as to whether male supervisor's harassment of male employee created hostile work environment within meaning of Title VII; (4) genuine issues of material fact precluded summary judgment as to whether employer was liable for male supervisor's sexual harassment of employee; (5) employee failed to show that job benefit was conditioned on his submission to male supervisor's sexual overtures as would support Title VII quid pro quo discrimination claim; and (6) genuine issues of material fact precluded summary judgment on Title VII retaliation claims.

Tenth Circuit

Buchanan v. Sherrill, 51 F.3d 227 (10th Cir. 1995)

Former employee brought action against former employer alleging sexual harassment and constructive discharge. The United States District Court for the Northern District of Oklahoma granted summary judgment in favor of former employer. Former employee appealed. The Court of Appeals held that: (1) district court did not abuse its discretion in denying former employee's motion for an extension of time, and (2) former employee, who quit her job after employer arranged to transfer her could not recover for sexual harassment or gender-based discrimination or for constructive retaliatory discharge in violation of Oklahoma law.

Harrison v. Eddy Potash, Inc., 248 F.3d 1014 (10th Cir. 2001)

Female employee sued employer and supervisor, alleging hostile work environment sexual harassment in violation of Title VII and violations of state law. The United States District Court for the District of New Mexico, entered judgment in favor of employee against supervisor on intentional infliction and battery claims, but for employer on Title VII claim. Employee appealed, and employer cross-appealed. The Court of Appeals, rejected employer's cross-appeal and reversed as to Title VII claim. Employer sought review. Following remand the Supreme Court, the Court of Appeals reversed and remanded in part. On remand, parties filed cross-motions for summary judgment. The District Court granted partial summary judgment for employee. Following jury verdict for employee on her Title VII claim and denial of employer's post-trial motions, employer appealed. The Court of Appeals held that: (1) jury verdict for employee in first trial on her tort of outrage and battery claims collaterally estopped employer from relitigating issue of whether employee consented to supervisor's advances; (2) employer's proposed jury instruction was not accurate statement of the law regarding whether employer could avoid vicarious liability through *Faragher-Burlington* affirmative defense; and (3) district court did not abuse its discretion by failing to instruct jury that generalized fear of retaliation does not constitute reasonable grounds for employee's failure to raise a complaint of harassment with her employer.

Eleventh Circuit

Ashmore v. J.P. Thayer Co., Inc., 303 F. Supp. 2d 1359 (M.D. Ga. 2004)

Two male employees sued employer for same-sex harassment allegedly committed by supervisor, and asserted claims of retaliation under Title VII and negligent retention under Georgia law. A jury returned a verdict in favor of employees and awarded each employee $50,000 in damages. Employer renewed motion for judgment as a matter of law which it made during trial and prior to verdict, arguing entitlement to new trial.

The District Court held that: (1) sufficient evidence was presented from which a reasonable jury could conclude that supervisor's harassment of employees was based on their male gender, even though evidence was disputed as to whether supervisor was homosexual; (2) evidence presented at trial conclusively established as a matter of law that employer took reasonable corrective action in response to employees' complaints of harassment, and that employees failed to take reasonable advantage of employer's sexual harassment policy, so as to preclude employer's vicarious liability for supervisor's conduct; (3) neither employee suffered any adverse employment action after complaining of supervisor's harassment, as required for employer to be liable for retaliation; and (4) employer was not liable for negligent retention of male supervisor under Georgia law.

Baldwin v. Blue Cross/ Blue Shield of Alabama, 480 F.3d 1287 (11th Cir. 2007)

Terminated employee sued employer for sexual harassment and retaliation under Title VII, and asserted various tort claims against employer under Alabama law. The United States District Court for the Northern District of Alabama, entered summary judgment for employer. Employee appealed.

The Court of Appeals held that: (1) employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, as required for Faragher- Ellerth defense; (2) employee failed to take advantage of preventive or corrective measures, thus satisfying second element of Faragher- Ellerth defense; and (3) employee's termination was not in retaliation for her sexual harassment complaint.

Breda v. Wolf Camera and Video, 222 F.3d 886 (11th Cir. 2000)

Former employee sued former employer for discrimination under Title VII and Americans with Disabilities Act (ADA). The United States District Court for the Southern District of Georgia, entered summary judgment for employer, and employee appealed. The Court of Appeals held that: (1) judgment as to disability harassment claim would be affirmed; (2) employer's policy gave store manager actual authority to receive complaints of harassment on behalf of company, for purposes of imposing liability on employer for coworker sexual harassment under Title VII; and (3) fact questions existed as to sufficiency of notice to store manager and employer, thus precluding summary judgment on hostile work environment sexual harassment claim.

Fowler v. Sunrise Carpet Industries, Inc., 911 F. Supp. 1560 (N.D. Ga. 1996)

Female employees brought action against employer, stemming from alleged sexual harassment committed by male supervisor. Employer moved for summary judgment. The District Court held that: (1) supervisor subjected employees to quid pro quo sexual harassment by threatening to fire employees if they reported his harassing conduct, and (2) threatening written reprimand, which is later removed from worker's personnel file, may qualify as “adverse employment action” for purposes of Title VII retaliation claim.

District of Columbia Circuit

Boyd v. Snow, 335 F. Supp. 2d 28 (D.D.C. 2004)

Employee, a trial attorney with Internal Revenue Service (IRS), brought action against agency under Title VII, alleging that her first-level supervisor sexually harassed her, that agency retaliated against her after she reported alleged harassment, and that supervisor violated Privacy Act by disclosing her rebuttal statement to performance evaluation to others in office. IRS moved for summary judgment.

The District Court held that: (1) sexual harassment claim was not time-barred, as tolling of 45-day time limitation for contacting Equal Employment Opportunity (EEO) counselor was appropriate; (2) genuine issue of material fact existed as to whether supervisor's conduct gave rise to hostile work environment; (3) genuine issues of material fact existed as to whether agency promptly took reasonable corrective action in response to employee's complaints and/or whether employee took reasonable measures to avoid harm, precluding summary judgment for agency on sexual harassment claim based on *Faragher* affirmative defense; (4) employee suffered no adverse employment action that could form basis of retaliation claim; (5) it was unclear whether agency's disclosure of rebuttal statement was authorized under "need to know" exception to Privacy Act; and (6) employee would be allowed to attempt to prove actual damages at trial.

Vinson v. Taylor, 753 F.2d 141 (D.C. Cir. 1985)

Female employee brought sexual harassment suit against employer and supervisor under employment discrimination statute. The United States District Court for the District of Columbia entered judgment in favor of employer and supervisor, and employee appealed. The Court of Appeals, Spottswood W. Robinson, III, Chief Judge, held that: (1) matter would be remanded in order that District Court could ascertain whether employee was subjected to "sexually stereotyped insults" or "demeaning propositions" that illegally poisoned the psychological and emotional work environment; it was not enough to determine that sex-oriented conditions to employment status had not been imposed; (2) evidence that other female employees had been sexually harassed by supervisor was admissible; and (3) employer was accountable for its supervisor's sexual harassment of employee notwithstanding employer's lack of actual knowledge thereof.

Case Summaries from Westlaw.com

Code

42 U.S.C.A. 2000e et seq.

Title VII of the Civil Rights Act of 1964 forbids discrimination in employment on the basis of sex.

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Secondary Sources

American Law Reports

Who is "Supervisor" for Purposes of Sexual Harassment Claim Under Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.) Imputing Liability to Employer

195 A.L.R. Fed. 463

This article discusses the different sources of definitions and theories regarding who a supervisor is for the purposes of employer liability in sexual harassment. Recognizing that employees can be vulnerable in relation to their employers, Congress endowed laborers with statutory rights and imposed upon employers the obligation to prevent the violation of those rights. Title VII of the Civil Rights Act of 1964, in § 703, prohibits an employer from discriminating "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." Although neither Title VII nor its legislative history fleshes out the meaning of its sweeping prohibition against employment discrimination on the basis of sex, § 1604.11 of Chapter 29 of the Code of Federal Regulations states that "harassment on the basis of sex is a violation of Sec. 703 of Title VII." The Supreme Court has referred to guidelines from the Equal Employment Opportunity Commission "holding that Title VII affords employees the right to work in an environment free from discriminatory intimidation, ridicule, and insult." It is established law that sexual harassment violates Title VII's broad rule of workplace equality. It was Congress' judgment that employers, not the victims of discrimination, should bear the cost of remedying and eradicating employment discrimination, and imposing liability upon employers serves this purpose.

When is supervisor's hostile environment sexual harassment under Title VII of Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e et seq.) imputable to employer.

157 A.L.R. Fed. 1 (1999)

This annotation collects and analyzes the federal cases which have discussed or decided when a supervisor's hostile environment sexual harassment under Title VII of the Civil Rights

Act of 1964 (42 U.S.C.A. §§ 2000e et seq.) is imputable to the employer. Cases decided prior to the Supreme Court's issuance of its vicarious liability standard for such Title VII actions in Faragher v. City of Boca Raton, 524 U.S. 775, 118 S. Ct. 2275, 141 L. Ed. 2d 662, 77 Fair Empl. Prac. Cas. (BNA) 14, 73 Empl. Prac. Dec. (CCH) ¶45341, 157 A.L.R. Fed 697 (1998), and Burlington Industries, Inc. v. Ellerth, 534 U.S. 742, 118 S. Ct. 2257, 141 L.Ed. 2d 633, 77 Fair Empl. Prac. Cas. (BNA) 1,73 Empl. Prac. Dec. (CCH) 45340 (1998), are discussed in so far as they factually relate to the elements of the affirmative defense established by the Supreme Court for such actions.

E.E.O.C. Guidelines

You can find the current E.E.O.C. Guidelines on Sexual Harassment at:

http://www.eeoc.gov/policy/docs/currentissues.html

American Jurisprudence

American Jurisprudence Proof of Facts 3d

Proof of Employer liability for sexual harassment claims under Title VII of the Civil Rights Act of 1964

52 Am. Jur. Proof of Facts 3d 1 (1999)

This article discusses employer liability for federal sexual harassment claims under Title VII of the Civil Rights Act of 1964 (the "Act").Title VII sexual harassment has been, and continues to be, a rapidly evolving area of law. While an employee who has been sexually harassed by another employee may have recourse against the harassing employee (under state law), the employer is ordinarily the potential defendant likeliest to be in a position to pay substantial damages. As a practical matter, then, a harassed employee will ordinarily view her employer as the primary defendant. There are at least two major categories of Title VII cases: 1) where the harasser is a supervisor of the complainant or otherwise is superior to the complainant in the corporate structure; and 2) where the harasser is a co-worker, who is not a supervisor. Most Title VII sexual harassment claims have been supervisor claims.

The first category—harassment by a supervisor—was recently addressed by the United States Supreme Court, which set forth a new controlling standard for employer liability in "supervisor" cases. Two Supreme Court decisions, Faragher v. City of Boca Raton and Burlington Industries, Inc. v. Ellerth,set forth and articulated the new standard. This article analyzes that new controlling standard for "supervisor" cases as set forth in those cases and also reviews the standard in "non-supervisor" (i.e., co-worker and non-employee) cases, as well as the basic elements for sexual harassment in Title VII cases.

Additionally, this article does not in any detail discuss employer retaliation against an employee for filing a sexual harassment complaint or otherwise opposing sexual harassment. Such retaliation is expressly prohibited under Section 704(a) of the Act.

American Jurisprudence

Employer's responsibility for harassment in workplace-Supervisor or manger hostile work environment harassment

45B Am. Jur. 2d Job Discrimination § 849

This article discusses federal fair employment practices laws while noting the key concepts in state fair employment practices laws, and includes discussions of the governing federal statutes, types of discrimination prohibited, persons protected, regulated employer, union and other practices, affirmative action plans, enforcement procedures, and reporting requirements.
Federal Aspects:

Federal statutes discussed herein include, but are not limited to, the Civil Rights Act of 1964 (primarily Title VII), earlier civil rights acts, the Age Discrimination in Employment Act, the Americans With Disabilities Act, the Equal Pay Act, and the Science and Technology Equal Opportunity Act. Executive orders that prohibit employment discrimination by private employers, state and local governments, federal agencies, federal contractors, registered apprenticeship programs, and recipients of federal funding are covered. The Migrant and Seasonal Agricultural Workers Protection Act, which prohibits discriminatory farm labor contractor practices, is covered, as is the Family and Medical Leave Act of 1993 and the Drug-Free Workplace Act of 1988. Other laws that incidentally restrict discrimination against employees (such as the Export Administration Act, which forbids discrimination on the basis of an employee's refusal to participate in a foreign boycott; the Jury System Improvement Act, which prohibits discrimination on account of jury service; the Employee Polygraph Protection Act, which regulates the employment-related uses of polygraph tests; and the Federal Election Campaign Act, which prohibits discrimination on the basis of campaign contributions) are also mentioned. See the Statutory References below for cites to federal statutory and regulatory cites included in this article.

Law Journals and Law Reviews

Howard Law Journal

Employer Liability Under Title VII for Hostile Environment Sexual Harassment by Supervisory Personnel: The Impact and Aftermath of Meritor Savings Bank

33 How. L.J. 1 (1990)

This article examines *Meritor Savings Bank* and assesses the impact of that decision on the question of employer liability in cases involving hostile environment sexual harassment of employees by supervisory personnel. Part I of the article presents a brief overview of recognized theories of sexual harassment as a form of unlawful discrimination under Title VII. Part II examines the differing responses of courts addressing the issue of employer liability for supervisory sexual harassment. Part III focuses on and discusses the Supreme Court's *Meritor Savings Bank* decision. In Part IV, the article examines post-*Meritor Savings Bank* decisions dealing with employer liability and assesses the legal and practical impact of the Court's decision on the results reached in those cases. Part V examines pertinent sections of the EEOC's recent policy guidance on sexual harassment issues. Finally, the article concludes that the Court's decision in *Meritor Savings Bank,* while clarifying certain aspects of the law with respect to Title VII and sexual harassment, has not definitively resolved the the significant question of liability in hostile environment cases. In the absence of a definitive ruling on that issue, the lower courts have applied agency principles in a way which continues to hold employers directly liable for harassment by supervisors.

Columbia Human Rights Law Review

Hostile Environment Sexual Harassment by a Supervisor Under Title VII: Reassessment of employer Liability in Light of the Civil Rights Act of 1991

24 Colum. Hum. Rts. L. Rev. 41. Winter, 1992/1993.

This Article reassesses the policies and rationales behind the different standards of employer liability advanced for sexual harassment by a supervisor. This reassessment will hopefully lead to decisions that best achieve the goals of both Title VII and the Civil Rights Act of 1991: the elimination of workplace discrimination and the provision of remedies to victims of this discrimination. This Article demonstrates that vicarious liability is the correct standard of employer liability for hostile environment sexual harassment by a supervisor. It also argues that vicarious liability best effectuates the statutory goals of Title VII and the Civil Rights Act of 1964. Part I discusses the Title VII causes of action for sexual harassment, the arguments overcome in the fight to recognize sexual harassment a violation of Title VII, and the feminist view of this social harm. Part II discusses the standard of employer liability generally imposed under Title VII for discrimination by a supervisor and how this standard changed in the context of sexual harassment. Part III discusses the decision of the Supreme Court in Meritor. Part IV discusses post-Meritor cases that passed on the issue of employer liability for hostile environment sexual harassment by a supervisor. Part V responds to the Meritor Court and its progeny and argues that vicarious liability is the appropriate standard for sexual harassment by a supervisor.

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