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## **Case Analysis**

# **Sexual Harassment**



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## Introduction

Over the past two decades, society has knocked down walls of the most destructive and institutionalized forms of gender discriminations and sexual harassment in the workplace. The national decrease in supervisor quid pro quo sexual harassment incidents testifies to the success of risk managers, human resource personnel and corporate policymakers to pass anti-harassment law. But as policies have been created to reduce sexual harassment incidents have fallen short to eliminate the second form of sexual harassment, a hostile work environment.

Sexual harassment affects people of all ages and races and of both sexes. Although it has been outlawed under Title VII of the Civil Rights Act of 1964 and prohibited under Title IX of the Education Amendments of 1972, many companies have yet to develop adequate policies and procedures for addressing sexual harassment. Sexual harassment is among the most prominent civil rights issues in the workplace. More than 15,500 sexual harassment charges were filed with the Equal Employment Opportunity Commission or state agencies in the fiscal year of 1998, compared to about 10,000 complaints of racial harassment (Long & Leonard, 1999). Moreover, one of the most important features of harassment cases these days is the concept of tangible employment action. It is imperative that human resource managers thoroughly understand the legal concepts that are the reoccurring in harassment litigation, so they can create policies that help keep their companies out of court.

Managers should keep ahead of the evolving employment laws that affect their employees. Most notably, anti-discrimination laws require all employers, including benefit funds, to create and maintain bias free workplaces. Recent Supreme Courts cases on sexual harassment have elaborated on the circumstances under which an employer can be held liable for sexual harassment by an immediate (or successively higher) supervisor (Albert & Salvatore, 1999). This paper will compare and analyze three sexual harassment cases and their role in defining sexual harassment in the workplace.

## Discussion

Recent court cases have given a clear need to regulate and define harassment in the workplace. A modern definition of sexual harassment is any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: 1) submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive environment (Albert & Salvatore, 1999).

The U.S. Supreme Court has recognized quid pro quo and hostile environment harassment since 1977 and 1986. But three more recent court decisions have given clear guidance to employers with respect to their responsibility. The first case introduces unique legal definition of sexual harassment in the case of *Meritor Savings Bank v.*

*Vinson* 477 U.S. 57 (1986) illustrates the Supreme Court's decision and definition of sexual harassment. The following summary of the case introduces the main points of the court's decision on the effect on sexual harassment as defined in the case.

The respondent Vinson former employee of Meritor Savings Bank brought an action against the bank and her supervisor at the bank, claiming that, during her employment at the bank, she had been subjected to sexual harassment by the supervisor in violation of Title VII of the Civil Rights Act of 1964, and seeking injunctive relief and damages (*Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)). During the trial the parties presented conflicting testimony about the existence of sexual relationship between respondent and the supervisor.

The District Court denied relief without resolving the conflicting testimony, holding that, if respondent and the supervisor did have a sexual relationship, it was voluntary, and that nothing to do with her continued employment at the bank. And, therefore Vinson was not a victim of sexual harassment. The court then went on to hold that, since the bank was without notice, it could not be held liable for the supervisor's alleged sexual harassment. However, the Court of Appeal reversed and remanded the previous decision. Noting that a violation of Title VII may be predicted on either of two types of sexual harassment: 1) harassment that involves the conditioning of employment benefits on sexual favors, and 2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. The Court of Appeals held that, since the grievance here was of the second type, and the District Court has not considered whether a violation of this type had occurred, a remand was necessary.

The Court further held that the need for a remand was not obviated by the fact that the District Court had found that any sexual relationship between respondent and the supervisor was a voluntary one. As to the bank's liability, the Court of Appeals held that an employer is absolutely liable for sexual harassment by supervisory personnel, whether or not the employer knew or should have known about it (*Meritor Savings Bank v. Vinson* 477 U.S. 57 (1986)).

In our second case of *Harris v. Forklift Systems, Inc.* 523 U.S. 75 (1998), petitioner Harris sued her former employer, respondent Forklift Systems, Inc., claiming that the conduct of Forklift's president toward her constituted "abusive work environment" harassment because of her gender in violation of Title VII of the Civil Rights Act of 1964. Declaring this to be "a close case," the District Court found, among other things, that Forklift's president often in Harris because of her gender and often made her target of unwanted sexual suggestions. However, the court concluded that the comments in question did not create an abusive environment because they were not "so severe as to.....seriously affect [Harris'] psychological well being or lend to suffering injury. The Court held that to be actionable as abusive work environment harassment conduct need not seriously affect an employee's psychological well being or lead the plaintiff to suffer injury.

The Courts decision was based on the fact that Title VII is violated when the workplace is permeated with discriminatory behavior that is sufficiently severe or pervasive to create a discriminatorily hostile or abusive working environment. This standard requires an objectively hostile or abusive environment. One that a reasonable person would find hostile or abusive as well as the victim's subjective perception that the environment is

abusive (*Harris v. Forklift Systems, Inc.* 510 U.S. 17 (1993)). Moreover, whether an environment is hostile or abusive can be determined only by looking at all the circumstances, which may include the frequency of the discriminatory conduct; its severity' whether it unreasonably hinders an employee's work performance. The effect on the employee's psychological well being is relevant in determining whether the plaintiff actually found the environment abusive. But while psychological harm may be taken into account.

In our final case *Oncale v. Sundowner Offshore Services, Inc.* 523 U.S. 75 (1998), petitioner Oncale filed a complaint against his employer, respondent Sundowner Offshore Services Inc., claiming that sexual harassment directed against him by respondent coworkers in their workplace constituted "discrimination .....because of.....sex" prohibited by Title VII of the Civil Rights Act of 1964. Relying on Fifth Circuit precedent, the District Court held that Oncale, a male, had no title VII cause of action for harassment by male coworkers. However, the Court held that sex discrimination consisting of same sex sexual harassment is actionable under Title VII. Title VII's prohibition of discrimination "because of .....sex" protects men as well as women. The Courts stated that there is no justification in Title VII's language or the Court's precedents for a categorical rule barring a claim of discrimination "because of.....sex" merely because the plaintiff and the defendant are of the same sex.

Recognizing liability for same sex harassment will not transform Title VII into a general civility code for the American workplace, since Title VII is directed at discrimination because of sex, not merely conduct tinged with offensive sexual connotations; since the statute does not reach genuine but innocuous of the same, and the opposite sex. And,

since the objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position (*Oncale v. Sundowner Offshore Services, Inc.* 523 U.S. 75 (1998)).

## Analysis

Awareness of sexual harassment in the workplace has reached unprecedented levels as current and past events have made sexual harassment a common topic in the U.S. courts. According to an EEOC report released in 1998, sexual harassment charges have more than doubled in recent years, going from 6,883 in 1991 to 15,889 in 1997. Also, monetary damages awarded in such cases have grown larger each year. In an article entitled *Current Legal Issues in Fund Human Resource Management* (1999), the author illustrates that in the last decade, there has been a tremendous increase in the number of sexual harassment lawsuits. During this period courts have recognized that employees may sue for sexual harassment not only where a supervisor conditions employment-related benefits or bases personnel decisions on an employees' submission to sexual overtures, but also where the employee is subjected to offensive, sexually related conduct that is continuous and pervasive.

As decided in the courts rulings above employers frequently are held liable for acts of harassment committed in the workplace when they are not aware such acts are taking place. For that reason, accompanying the growth of sexual harassment lawsuits have been increased efforts by employers to initiate measures designed to deter acts of harassment, and to detect and remedy them promptly when they do occur in the workplace. Such

measures also serve as a matter of law to minimize the likelihood that liability for sexual harassment will be extended to the employer (Albert & Salvatore, 1999).

Most recently, the Supreme Court has said that when an immediate or successively higher supervisor's harassment results in adverse, tangible job consequences, the employer will be liable for the supervisor's actions. However, as in the case of *Meritor Savings Bank v. Vinson* 477 U.S. 57 (1986). The Court ruled without showing that the employer is negligent (or otherwise at fault) for the supervisor's actions. Nonetheless, the employer may raise an affirmative defense looking to the rationality of the conduct of both the employer and the plaintiff. The ruling in the cases discussed show that in Title VII's prohibition on employment discrimination on the basis of sex provides the foundation for human resource managers to protect and prevent against sexual harassment in the workplace.

## Summary

Every employer wants a workplace that is free of sexual harassment. No manager's needs to read a Supreme Court decision to know that behavior that violates standards of human decency cannot be tolerated. Yet, managers also know that individuals occasionally violate social and legal norms. Therefore, employers must act proactively by establishing a policy that is effectively designed and implemented to prevent harassment (DiLullo & Pearce, 2001). This paper introduces and analyzes three uniquely different cases which rulings have transformed the level of activity undertaken by human resource managers to prevent sexual harassment. These cases give raise to a new standard in

education and establishing initiatives to prevent sexual harassment in the workplace. The supplemental goal is to document efforts by the firm that will be favorably evaluated by the courts in determining employer liability and damages should sexual harassment occur.

While no policy can guarantee appropriate behavior, the human and financial costs of sexual harassment violations are high that efforts to prevent them require managers' total commitment. Overall, the individual rulings in the Supreme Court cases helped to further refine the way sexual harassment is determined. Human resource managers need to incorporate the Court's decisions into company policy. In conclusion, it is essential to observe how the specific circumstances surrounding the cases have transformed the completed definition of sexual harassment in the workplace.

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