Comment

The Legal History of Work-Related Sexual Harassment and Implications for Employers

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Over the years, the courts have come to consider sexual harassment as a kind of sex discrimination under Title VII of the Civil Rights Act of 1964. Employers are held liable for sexual harassment, and have an affirmative action obligation to eliminate sexual harassment from the workplace. The courts and the EEOC Guidelines have defined sexual harassment as tangible employment consequences or behavior that creates a hostile or offensive working environment. Employers can limit their liability by creating a system to detect sexual harassment and to remedy it promptly. Suggestions towards developing a strong policy to eliminate sexual harassment from the workplace are given.

KEY WORDS: sexual harassment; sex discrimination; affirmative action.

INTRODUCTION

One rapidly growing area of employee civil rights litigation that is receiving increased attention is sexual harassment. The first case to grant relief for sexual harassment under Title VII of the Civil Rights Act of 1964 was Williams v. Saxbe (1976). By 1979, more than 1,000 charges of sexual harassment had been brought before the Equal Employment Opportunity Commission (Hubbart, 1980) and perhaps twice that number before state and local agencies (Bureau of National Affairs, 1981).

Harassment can take many forms, although it always refers to actions that tend to annoy, alarm, or abuse another person (Black, 1979). Sexual harassment narrows this definition to annoying behaviors that are sexually motivated, carry sexually offensive meanings or intentions, or which the victim suffers because of her (or his) sex. The range of proscribed behaviors may be quite large: offensive words or gestures, overt sexual advances, retaliation for filing an Equal Employment Opportunity Commission complaint, or sexual assault (Faley, 1982). On November 10, 1980, the EEOC published the Guidelines on Sexual Harassment, which specify that sexual harass-

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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 either 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, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment (EEOC, 1980).

In the most frequent type of sexual harassment case (Bureau of National Affairs, 1981, 1982), a male supervisor makes sexual advances towards a female subordinate, is rebuffed, and then retaliates, causing economic harm to the victim (e.g., Phillips v. Smalley Maintenance Services, 1983). The courts define this as sexual harassment because the female employee would not have suffered the annoying behavior but for her sex.

Another kind of sexual harassment occurs when submission to sexual advances is made a condition of employment, either in hiring, continued employment, or promotion (e.g., Garber v. Saxon Business Products, 1977). The courts refer to this form of sexual harassment as quid pro quo, because the victim must show there were tangible employment consequences to refusing the sexual advances. Sexual harassment also can occur when one employee engages in a sexual relationship with a supervisor and is rewarded with an employment benefit denied to an equally qualified third party (e.g., King v. Palmer, 1985).

The final variety of sexual harassment occurs when the complained of behavior causes a deterioration in the quality of the employee's work by creating an unreasonable or intolerable work environment (e.g., Meritor Savings Bank v. Vinson, 1986). The courts refer to this form of sexual harassment as "offensive work environment" because victims must show that the complained of behavior caused a deterioration in the quality of their work, or was an irrational or unreasonable condition imposed on their employment. To simplify, victims can bring suit against employers by claiming either a loss of tangible employment benefits or an atmosphere of discrimination (Bureau of National Affairs, 1984; Faley, 1982; Waks and Starr, 1982a).

**A BRIEF LEGAL HISTORY OF SEXUAL HARASSMENT CASES**

Williams v. Saxbe (1976) laid the foundation of federal case law recognizing sexual harassment as a form of sex discrimination prohibited by Title VII (Bureau of National Affairs, 1981). The court held that the retaliatory actions of a male supervisor, taken because the plaintiff declined his sexual advances, constituted sex discrimination under Title VII, and that any rule, regulation, practice, or policy that is applied on the basis of sex alone is sex discrimination.

**Evolving Definition**

Sexual harassment case law has evolved from requiring proof of tangible employment consequences from harassment, to accepting proof that harassment