

Righting the Wrongs

Supreme Court Update

Gebser v. Lago Vista Independent School District, 118 S. Ct. 1989 (1998)

In this case, the Court addressed the issue of when a school district can be held liable for compensatory damages under Title IX.

Facts

A teacher sexually abused the 13-year-old plaintiff student for approximately one year, stopping the misconduct only after a police officer discovered them engaging in sexual intercourse. The school had neither a formal anti-harassment policy nor an official grievance procedure for handling sexual harassment complaints. The student never reported the harassment. *Gebser*, 118 S. Ct. at 1993.

Holding

In a 5 – 4 decision, the Court held that schools are liable for compensatory damages in Title IX private suits for teacher-to-student sexual harassment only when a school official with authority to institute corrective measures had actual knowledge of the harassment and responded to it with “deliberate indifference.” Applying this standard, it denied relief to the plaintiff. *Id.* at 1999–2000.

Discussion

The Court ruled that Title VII legal standards — specifically agency principles — do not apply in determining the availability of damages. It suggested that Title VII principles may help in determining what types of misconduct constitute sex discrimination for purposes of a liability finding, for non-monetary damages relief, and for agency enforcement. *Id.* at 1996.

The Court concluded that because Title IX’s enforcement scheme requires agencies to notify recipients of noncompliance and give them an opportunity to comply with the law before initiating the process for removal of federal funds, then Congress similarly must have intended that schools be held liable only for discriminatory actions of which they actually were aware. *Id.* at 1998.

Significantly, the Court emphasized that this standard applies only to the availability of compensatory damages in private actions, acknowledging that administrative agencies may have different standards for determining non-compliance, which presumably also may apply when equitable relief is sought in private actions.

As a result, this decision leaves undisturbed the validity of the sexual harassment policy guidance the Department of Education’s Office for Civil Rights (OCR) issued in March 1997. This policy applies agency principles to determining whether a school district is in non-compliance with Title IX in cases of teacher-to-student sexual harassment. *See generally* Chapter 3, “When are Schools Liable for Sexual Harassment?”

The Court clarified how agency principles should be applied in Title VII cases in *Faragher v. City of Boca Raton* and *Burlington Industries, Inc. v. Ellerth*, which are described in a separate **Supreme Court Update**. This analysis likely will apply to OCR’s determinations of whether schools are in compliance with Title IX.

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Supreme Court Update

Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998).
and
Burlington Industries v. Ellerth, 118 S. Ct. 2257 (1998).

These cases clarify the standard of employer liability under Title VII of the Civil Rights Act of 1964 for supervisor-to-employee harassment. *Ellerth* also holds that an employer can be liable for sexual harassment for a threat of harm alone.

Facts

Faragher: Faragher, one of few women lifeguards working for the City of Boca Raton, alleged that two of her supervisors subjected her to a sexually hostile environment over the course of five years. Although the City had a sexual harassment policy, it failed to distribute it to the lifeguards or otherwise make them aware of its existence. Nor did the policy set out procedures for bypassing a supervisor when reporting complaints. Faragher did not complain to high level officials about the harassment. *Faragher*, 118 S. Ct. at 2279-81.

Ellerth: A Burlington vice president sexually harassed Ellerth over the course of about one year with comments, many of which were veiled threats, such as telling Ellerth that he could make her life at Burlington “very hard or very easy,” informing her that her job would be “a whole lot easier” if she wore shorter skirts, and voicing his hesitation to promote her because she wasn’t “loose enough.” Despite these threats, however, the supervisor promoted Ellerth. Ellerth alleged that she had been subjected to both *quid pro quo* and hostile environment sexual harassment. *Ellerth*, 118 S. Ct. at 2262-63.

Holding

In 7 – 2 decisions, the Court held in both cases that employers are vicariously liable under Title VII for sexual harassment by supervisors, whether *quid pro quo* or hostile environment, that results in a tangible employment action, such as a demotion or reduction in pay, whether or not there has been notice to the employer of the harassment and regardless of the existence of policies or other actions taken by the employer to eliminate sexual harassment in the workplace.

Where no such tangible employment action results — irrespective of whether *quid pro quo* or hostile environment harassment is alleged — employers may limit or avoid liability if they can demonstrate

- 1) that they exercised reasonable care in preventing and correcting promptly any sexual harassment; and
- 2) that the plaintiff unreasonably failed to take advantage of such procedures.

Discussion

These cases resolve a number of conflicting lower court decisions regarding the extent to which employers can be held liable for the harassing misconduct of a supervisor. The Court crafted a standard intended to “recognize the employer’s affirmative obligation to prevent violations and give credit. . . to employers who make reasonable efforts to discharge their duty.” *Faragher*, 118 S. Ct. at 2292.

These cases also make clear that employer liability in the Title VII context turns on whether the victim suffered a tangible economic harm, such as a lost promotion or raise, rather than on the form the harassment took. Specifically, in *Ellerth* the Court found that the plaintiff had stated a claim for hostile environment, noting that the categories of *quid pro quo* and hostile environment are “relevant when there is a threshold question whether a plaintiff can prove discrimination in violation of Title VII.” *Ellerth*, 118 S. Ct. at 2265. These terms are defined in **Righting the Wrongs**, Chapter 2, “What is Sexual Harassment?”

Under *Gebser*, this analysis of institutional liability does not apply to individual causes of action for damages under Title IX. It may, however, apply to determining whether Title IX has been violated in administrative proceedings by the Department of Education’s Office for Civil Rights (OCR), or individual actions where remedies other than damages are sought.

These decisions make clear, however, that schools must develop strong, meaningful policies, disseminate them widely, and enforce them effectively when responding to their employees’ complaints of harassment. By providing such protections to students, schools can ensure that employees and students alike can work and learn in a safe and non-discriminatory environment.