

# **Title VII of the Civil Rights Act of 1964 & the Developing Definition of Sexual Harassment in the Workplace**

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Until the late 1970's, the term sexual harassment was not a phrase heard as a violation under Title VII of the Civil Rights Act of 1964 (Thomas, 2016). Racial harassment and discrimination was recognized as illegal under Title VII of the Civil Rights Act of 1964 in 1971 (Thomas, 2016). However, courts did not define ill-advised sexual behavior as discrimination because of one's sex until initial conversations started on the topic of women and the workplace (Thomas, 2016). Title VII states that it is illegal to "fail or refuse to hire or to discharge any individual" or to discriminate in the "compensation, terms, conditions or privileges of employment" on the basis of employee's prospective employee's race, color, religion, sex, or national origin (MacKinnon, 1979). Defining the courts meaning of what is discriminatory, however, can be considered complex (MacKinnon, 1979). This complexity and differences of perspectives would contribute to the movement of defining sexual harassment in the workplace as illegal.

In the spring of 1975, the Cornell Human Affairs Program organized a "speak-out" addressing woman's sexual harassment experiences in the workplace (Thomas, 2016). The speak-out formed the new organization, Working Women's Institute, which relocated to New York City (Thomas, 2016). In result of the speak-out, a reporter of the *New York Times*, Enid Nemy, wrote an article titled, "Women Begin to Speak Out Against Sexual Harassment at Work" (Thomas, 2016). This article is said to be the first time the phrase "sexual harassment" appeared in publication (Thomas, 2016). Conversations about defining sexual harassment would increase among the media, and specifically women workers, to present to courts how these experiences may lead to possible results of discrimination because of sex (Baker, 2011).

Today, The Equal Employment Opportunity Commission (EEOC) has attempted to define the behavior of sexual harassment (Levy & Paludi, 2002). Although it is challenging to find a workable definition, the EEOC under Title VII states the law as follows:

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 unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment (Levy & Paludi, 2002, 14).

The EECO also defines two different types of sexual harassment, *Quid Pro Quo* Harassment and Hostile Condition of Work Environment (MacKinnon, 1979; Levy & Paludi, 2002). Feminist legal scholar, Catharine A. MacKinnon, coined the developing definitions of these types of sexual harassment in 1979 in her famous publication of *Sexual Harassment of Working Women*. Mackinnon's working explanations of situational sexual harassment accelerated a movement among women workers to come forward about their experiences and share how it affected them in the work environment (Baker, 2011). In 1976, there was a transition of perspective when the first federal court recognized sexual harassment as sex discrimination (Thomas, 2016). Plaintiffs such as, Paulette Barnes, Jane Corne, and Geneva DeVane, Margaret Miller, and Adrienne Tomkins, all won reversals in their appeals and shared similar cases among each other (Thomas, 2016). These women all shared the economic and emotional suffering from being fired or forced to quit their jobs for rejecting their bosses' sexual demand (Thomas, 2016). Catharine MacKinnon named this as the first type of sexual harassment, *Quid Pro Quo* (MacKinnon, 1979).

*Quid Pro Quo*, which is Latin for "this for that," means sexual advances that are rejected then punished for not agreeing to submission (Thomas, 2016; Levy & Paludi, 2002). An employee is coerced to fulfill sexual favors or forfeit an employment benefit because they feel threatened of economic loss (MacKinnon, 1979; Levy & Paludi, 2002). *Quid Pro Quo* puts an employee in a discriminatory condition on the basis of their sex (Levy & Paludi, 2002). For a case to be illegal, the action must be "unwelcomed" by the plaintiff, and in simple terms, they did not want to be subjected in making a choice (Levy & Paludi, 2002). The distinction between *Quid Pro Quo* from Hostile Condition of Work was left ambiguous before the Supreme Court the case *Burlington Industries v. Ellerth of 1998* was brought to their attention (Levy & Paludi, 2002).

Kimberly Ellerth, a salesperson of Burlington in Chicago, claimed her supervisor, Tom Slowik, subjected her to sexual harassment repeatedly (Levy & Paludi, 2002). In May of 1994, Ellerth quit her job because of the constant harassment of Slowik making comments about the length of her skirts, her attractiveness of her physical features, and physical gestures towards her during an interview for a potential promotion (Levy & Paludi, 2002). The court had to question whether or not there was a tangible job injury resulting from refusal to submit to a supervisor's sexual demands (Levy & Paludi, 2002). If there was tangible job injury, Title VII was and is violated (Levy & Paludi, 2002). When tangible job injury does not occur, it must be tested to see if the conduct is considered "severe and pervasive" (Levy & Paludi, 2002). For the employer, they can take two affirmative defenses (Levy & Paludi, 2002). In *Workplace Sexual Harassment*, Chapter 2: Sexual Harassment from the Legal Perspective defines these defenses as, "(a) the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior and (b) the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise."

In *Burlington Industries v. Ellerth*, Ellerth had proven findings of both *quid pro quo* and hostile environment, but the court found the employer not liable because Ellerth had not filed complaints about her supervisor's behavior and a result of unfulfilled threat of tangible workplace injury to claim a *quid pro quo* case (Levy & Paludi, 2002). The Supreme Court let the District Court re-look at the case for new findings and noted there was an issue of distinction between *quid pro quo* and hostile condition of work environment (Levy & Paludi, 2002). The Supreme Court accepted the District Court findings that the conduct was severe and pervasive, which is a violation of Title VII (Levy & Paludi, 2002). From this case, the Supreme Court concluded the new rule on clarification between *quid pro quo* and hostile condition of work environment cases which is as follows:

An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by preponderance of the evidence (Levy & Paludi, 2002, 19).

Although the decision of the court for Kimberly Ellerth could not make a *quid pro quo* claim, her case and many others receive valid claims for the second type of harassment that involves conduct of a "hostile condition of work environment" (Levy & Paludi, 2002). This is the most common type of sexual harassment cases presented today, and it helps define the basis of inappropriate conduct in the workplace (Levy & Paludi, 2002). In the 1980's, the court relied on the EEOC's guidelines (stated above) and Catherine MacKinnon's, *Sexual Harassment of Working Women*, to understand situational examples and psychological effects of a hostile work environment (Thomas, 2016). MacKinnon describes the behaviors that fulfill this classification as follows:

Unwanted sexual advances, made simply because she has woman's body, can be daily part of a woman's work life. She may be constantly felt or pinched, visually undressed and stared at, surreptitiously kissed, commented upon, manipulated into being alone, and generally taken advantage of at work – but never explicitly connected with her job...Sexual harassment as a working condition often does not require a decisive yes or no to further involvement. The threat of loss of work explicit in the *quid pro quo* may be only implicit without being any less coercive...This requires "playing along," constant vigilance, skillful obsequiousness, and an ability to project the implication that there is a sexual dimension to, or sexual possibilities for, the relationship, while avoiding the explicit "how about it" that would force a refusal into the open (Thomas, 2016, 88).

These cases center on the behavior described above, and also the effect of creating an intimidating and hostile work environment on an individual, which are a result of a violation of Title VII (Levy & Paludi, 2002). MacKinnon's and the EEOC

Guidelines improved the discrepancy for businesses and judges to understand the behavior of “normal” and “inappropriate” between sexes (Levy & Paludi, 2002). MacKinnon’s book and the EEOC Guidelines became impactful for many cases of sexual harassment, and changed the results of one of the most pivotal cases, *Meritor Savings Bank v. Vinson of 1986*. Mechelle Vinson’s case against her supervisor Sidney Taylor would become one of the first leading cases for conversation of sexual harassment as sex discrimination under Title VII (Thomas, 2016).

The Supreme Court acknowledged the issue of sexual harassment in 1986 in *Meritor Savings Bank v. Vinson*. The case was the leading news for sexual harassment dialogue in the media and many of the existing feminist organizations filed *amicus curiae* briefs during this case, insisting the courts to develop prohibitions of sexual harassment (Baker, 2011). The victory of Mechelle Vinson was a pivotal accomplishment in the movement to advance sexual harassment as a violation of Title VII (Baker, 2011). Vinson’s prolonged case was reported in 1974 against her supervisor, Sidney Taylor, and her employer, Meritor Savings Bank (Levy & Paludi, 2002). She claimed that for her four years of employment, she had experienced continuing sexual harassment and was subjected into being coerced into sexual relations with Taylor in a motel out of fear of losing her job (Levy & Paludi, 2002). Taylor repeatedly made demands for sexual favors during and after business hours, he fondled her in front of employees, exposed himself to her, and raped her on several occasions (Thomas, 2016; Levy & Paludi, 2002). He not only harassed Vinson, but also touched and fondled other female employees (Thomas, 2016; Levy & Paludi, 2002). Sidney Taylor’s sexual demands were linked with many threats against Vinson, which would usually be classified as *quid pro quo* (Thomas, 2016). However, Taylor never followed through on the threats because she gave into his demands (Thomas, 2016). She could not prove quantifiable financial losses, which made Vinson’s case more challenging in categorizing the type of sexual harassment presented (Thomas, 2016).

Vinson’s work environment was sexualized, and exemplified characteristics of “condition of work harassment” (Thomas, 2016). In the beginning of Vinson’s case, there was no law that existed pertaining to sexual harassment (Thomas, 2016). In 1980, Judge John Garrett Penn ruled that the plaintiff was not the victim of sexual harassment or sexual discrimination (Thomas, 2016). The trial was said to refuse any testimony against Sidney Taylor and brought witnesses to the stand that attacked Mechelle Vinson for her wardrobe instead (Thomas, 2016). Pat Barry, Vinson’s lawyer, believed that Penn conducted the trial on his judgment of Vinson to be a “slut” and her previous sexual history (Thomas, 2016). Barry immediately prepared Vinson’s appeal receiving help from the New York City’s Working Women’s Institute, the San Francisco Equal Rights Advocates, and the Chicago-based Women Employed in order to support her brief (Thomas, 2016).

As Vinson’s case progressed, the EEOC updated its Guidelines on Discrimination Because of Sex, declaring sexual harassment as a violation of Title VII, a factor in favor of Vinson winning her case (Thomas, 2016). In 1981, The D.C. Circuit, which would be the court to decide Vinson’s appeal, was also the first

federal court to recognize sexual discrimination as part of a hostile work environment and a violation of Title VII (Thomas, 2016). In the case, *Bundy v. Jackson of 1981*, appellant employee Sandra Bundy filed a complaint that her employer violated Title VII by refusing her promotions because she denied the offensive sexual advances of her supervisors (D.C. Cir. 1981). The court found that Bundy suffered discrimination on the basis of sex and proved a victim of sexual harassment that was permitted by her employer (D.C. Cir. 1981).

With the revision of the EEOC Guidelines and the progressive court of the *Bundy* case, it was decided that Vinson required a new trial (Thomas, 2016). On June 19<sup>th</sup>, 1986 Justice Rehnquist delivered the opinion of the unanimous court stating that harassment that is emotionally and psychologically harmful and is just as illegal as tangible economic loss (Thomas, 2016).

Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets (Thomas, 2016, 102).

Mechelle Vinson's case would go back to Judge Penn, and result in a victory. Vinson's case may have revolutionized the law, but the not the culture of sexual harassment (Thomas, 2016). Just as Justice Rehnquist contrasted in his opinion above, much of the progressive movement that changed for laws on the basis of sex were reformed from the existing laws of racial discrimination (MacKinnon, 1979).

Carrie N. Baker describes "the strength of the movement against sexual harassment stemmed from its racial and economic diversity" (Baker, 2011). As being implemented as a violation of Title VII under the Civil Rights Act of 1964, the movement relied on existing antidiscrimination law and civil rights precedent of racial harassment to adopt a revolutionary interpretation of the law based on sex (Baker, 2011). In contrast to racial harassment laws, the court follows a number of elements that make up a "hostile" condition of work environment for an individual making a claim. These elements are analyzed from the following: the harassment conduct based on gender, conditions of employment at risk, effect versus intent, objective and subjective tests, filed complaints, and unwelcomed behavior (Mackinnon, 1979). The framework that would serve to define what sexual harassment is on the basis of sex discrimination would mirror similarities to racial harassment, and elements drawn out by the court (Baker, 2011).

As the sexual harassment law progressively changes in Title VII under the Civil Rights Act of 1964, the framework promotes equality in American society for businesses among genders (Baker, 2011). More cases of sexual harassment convince courts that it is not a matter of personal problem, but barrier of equal employment opportunity (Baker, 2011). The narrow scope of the definition has broadened, setting statutes of sexual harassment policies in businesses and holding employers liable (MacKinnon, 1979). Sexual harassment activism through feminist activists,

attorneys, and organizations proves as an influential example of previously being a “normalized” behavior in the workforce to a civil rights violation (Baker, 2011). Through recognition of these behaviors as illegal, it is found that social change has evolved through law (Baker, 2011). By challenging an indignity in the workplace, the law under Title VII defines the economic harm, physical abuse, and emotional impact of sexual harassment as sexual discrimination. The Civil Rights Act of 1964 now protects an individual because of their sex.

### Works Cited

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