

POP QUIZ

Which of the following scenarios constitutes employer liability for sexual harassment in the workplace?

- ⇒ a supervisor makes implied promises/threats over a period of a year to a subordinate to the effect that wearing a certain type of clothing might make the subordinate's job a whole lot easier. The subordinate does not comply and is not punished. In fact, she receives a promotion.
- ⇒ a supervisor requests sexual favors of his subordinates, but the employer does not know about the behavior and has a sexual harassment policy.

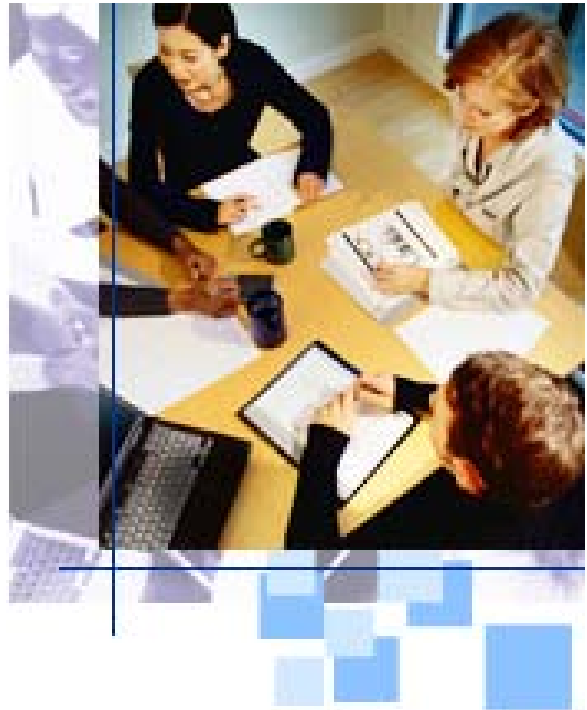
Hopefully you answered yes to both. A trick question to be sure and even trickier because the Supreme Court cases these two situations refer to have passed from the headlines since the summer of 1998. Have they passed into your sexual harassment policy? This article will provide a brief review of these two cases and their policy and procedural implications.

In Ellerth v. Burlington Industries, the Supreme Court ruled that a company could be liable for damages even if there are no tangible job actions taken against the employee alleging harassment.

THE NEW RULINGS

Despite the fact that the employee did not receive any retribution for failing to follow her supervisor's garment requests, the Supreme Court, in *Ellerth v. Burlington Industries*, ruled that she was harassed based on the ugly behavior of the supervisor regardless of the lack of subsequent job action.

In *Faragher v. Boca Raton*, the Supreme Court ruled against the employer despite the presence of a sexual harassment policy. Faragher did report groping, requests for sexual favors and the use of sexual epithets to a superior, but the superior did not.



The court did also place clearer responsibilities on employees with these decisions. If the employer has a clearly communicated policy in place, the employee has an obligation to report the harassment to the staff member identified as coordinating the policy.

IMPLICATIONS

Employers must take proactive steps to maintain a harassment free workplace. Regular communication of a policy and clear directions regarding the complaint procedure along with thorough investigation procedures and the proper use of discipline will ensure the effectiveness of the policy. In cases where no tangible job action is evident, these measures will show the employer's attempt to prevent and correct sexual harassment. In cases where an employee does not report or reports to other than the designated sexual harassment staff, the employee has failed to take advantage of the preventive and corrective opportunities offered by the employer.