

# Legal Background of Sexual Harassment

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*Burlington Industries, Inc. v. Ellerth* 1998 (Tighter restrictions and broadened harassment)

Kimberly Ellerth, a female salesperson in Illinois alleged that from 1993 to 1994 a mid-level manager, to whom her immediate supervisor reported, made repeated offensive remarks and gestures. She never reported his actions, and she was promoted, but she said that she eventually quit due the manager's unwelcome comments about her breasts, buttocks and legs, and how her job would be easier if she "loosened up" and wore shorter skirts.

U.S. Supreme Court ruled that—under Title VII of the Civil Rights Act of 1964, that employers are liable for workers who sexually harass subordinates, even if the harassed employee does not face any adverse job consequences or tangible employment action. However, the court also held that employers can make an affirmative defense in certain cases

- An employer must prove two things: (a) that it took reasonable care to "prevent and correct promptly any sexually harassing behavior" and (b) that the employee "unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to otherwise avoid harm."



# What is Sexual Harassment?

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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 this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

# Sexual Harassment Prevention

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Prevention is the best tool.

Communicating to employees that sexual harassment will not be tolerated,

Training on harassment prevention.

Effective complaint process.

Taking immediate action.

# How Common is Sexual Harassment?

- About 70% of women and 20% of men have experienced sexual harassment
- 70-90% of women who experience sexual harassment at work never file a formal complaint.
- About 25,000 plus sexual harassment cases are reported to the EEOC each year.