

Supreme Court Clarifies Application of Faragher/Ellerth Defense Where Employees Claim Constructive Discharge

Publication

12.01.05

In a significant percentage of sexual harassment cases, the employer's first notice of any problem is after the complaining employee has quit and filed a charge of discrimination with the Equal Employment Opportunity Commission or a state agency. Typically, the employee claims that the very same supervisory conduct that amounted to a hostile environment (and, hence, actionable sexual harassment) also forced the employee to resign. The employee then complains that his or her constructive discharge was a "tangible employment action" that prevents the employer from asserting the now familiar *Faragher/Ellerth* affirmative defense to liability in instances of supervisory sexual harassment. In *Pennsylvania State Police v. Suders*, the United States Supreme Court addressed this commonly deployed argument and provided important clarification for employers in this area. In a nutshell, the Supreme Court held that where the employee's claim of constructive discharge rests solely upon the supervisor's sexually harassing conduct itself, and not upon some other "official act" of the employer, the *Faragher/Ellerth* defense to vicarious liability still applies.

This article appeared in the Winter 2005 issue of the [Committee on Corporate Counsel Newsletter](#).

Related People



Joel W. Rice
Partner
312.580.7810
Email

