Pittsburgh Post-Gazette

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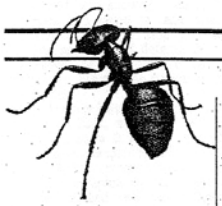
PITTSBURGH POST-GAZETTE ■ SATURDAY, JUNE 27, 1998 VOL. 71 NO. 330 6/26/98 • FINAL



The ants are coming!

Homeowners here can thank the El Nino-generated mild winter and wet spring.

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Justices back harassed workers

Take companies to task for sexual actions by bosses

By Dan Freedman
Hearst News Service

WASHINGTON — In twin landmark rulings, the Supreme Court made it significantly harder yesterday for employers to defend themselves against sexual harassment charges by claiming they were unaware of what lower-level supervisors were doing.

In both 7-2 decisions on the last day of its term, the court said employers in most cases could not use this defense because the federal civil rights law that bars sex discrimination or harassment equates employers with their "agents," or supervisors.

So if a supervisor engages in harassment, the company could be subject to "vicarious liability" even if its top officials were ignorant of the supervisor's actions, the court said, wrapping up its 1997-1998 term.

In the decisions, which made it easier for workers to sue employers for harassment, the court for the first time promulgated standards governing the kinds of defenses, if any, the employers may use.

Women's rights advocates hailed the rulings.

Marcia Greenberger, co-president of the Washington-based National Women's Law Center, an advocacy and litigating group, said, "I think these cases provide an important win for women. The court's new rules provide powerful tools for those complaining about sexual harassment in the workplace, but at the same time they provide powerful incentives for employers to eliminate sexual harassment before it takes place."

Judith Lichtman, president of the National Partnership for Women and Families, an advocacy group, said that "by insisting that the buck stops with the employer, the court's decisions will help make sure that sexual harassment is really taken seriously."

William Kilberg, representing the National Association of Manufacturers and the Manufacturers Alliance, said: "Employers ought to be happy with the decisions because they reject the notion that the employer is automatically liable. Nonetheless, the court [put] a very heavy burden on employers to show that they have an effective complaint policy in place."

A Pittsburgh lawyer, Samuel J. Cordes, called the rulings "a major sea change" that would make it "100 times easier for plaintiffs to prevail" in cases where a hostile working environment is alleged.

Cordes is a partner in the firm of Ogg, Jones, Cordes & Ignelzi, specializes in representing people who bring claims of employment discrimination.

The rulings, Cordes said, shift the burden of proof on the issue of an employer's responsibility from employee to employer.

In the past, employees had to

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Supreme Court gets tough on employers over sex harassment

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show that their employer knew or should have known of the harassment and failed to take prompt, remedial action to stop it, he said. The new lines of defense for employers, he said, may present companies with a tough choice on legal tactics.

Another Pittsburgh lawyer, Carole S. Katz, a partner in Reed, Smith, Shaw & McClay who often counsels companies on how to avoid sexual harassment lawsuits and defends companies when they are sued, agreed with Cordes that the major change in the law is the shift in the burden of proof.

"The key difference is that the burden of proof has shifted to the employer to prove that we acted reasonably in trying to prevent this in the first place and in making sure that if it occurred, employees knew they had a meaningful place to go."

But Katz disagreed with Cordes' characterization of the decisions.

"It's not a radical change in the law. But it is a shot in the arm for plaintiffs' lawyers, psychologically, because it lightens their burden of proof," she said.

She outlined some practical advice she has given companies for many years.

Companies, Katz said, "should ensure that:

- "They have a well-drafted policy that prohibits sexual harassment."
- "They have set up an effective complaint and investigatory

lewd remarks to her and engaged in "uninvited and offensive touching." One supervisor told her "date me or clean the toilets for a year."

The U.S. District Court in Miami ruled that Faragher's supervisors had harassed her, but an appeals court reversed the ruling, saying the city of Boca Raton was not liable.

In overturning that decision, the Supreme Court said the city had failed to rebut the allegations of its liability. Thus, apparently all that remains to be determined in the case is how much money Faragher, now a public defender in Denver, can collect from Boca Raton.

The other case involved a Chicago saleswoman, Kimberly Ellerth, who quit her job with Burlington Industries Inc. in 1994 after 15 months. Ellerth, now a homemaker in Belvidere, Ill., said she quit because a supervisor, Theodore Slowik, had touched her inappropriately, told offensive jokes, advised her to "loosen up" and warned, "You know, Kim, I could make your life very hard or very easy at Burlington."

But he never carried through on the threat, and Ellerth in fact earned a promotion before quitting.

Justice Anthony Kennedy, writing for the high court, said it didn't matter whether the supervisor delivered on the threat.

Joining Kennedy and Souter in the opinions were Chief Justice William Rehnquist and Justices John Paul Stevens, Sandra Day O'Connor, Ruth Bader Ginsburg and Stephen Breyer.

Justices Clarence Thomas and Antonin Scalia, the court's most conservative members, joined in a dissent.

Staff writer Marylynne Pitz contributed to this report.