

## The Supreme Court and Civil Rights in Sport: Sexual Harassment and the Coach/Student Athlete Relationship

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**Session 15: Legal aspects  
Presentation (25-minute)**

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**10:00 AM - 10:25 AM**

This presentation will summarize the most significant Supreme Court decisions, both within and outside the sport industry, relating to sexual harassment claims under both Title VII and Title IX for the purpose of emphasizing some critical differences between these claims and its impact on sport managers and administrators. In addition, the impact of recent sexual harassment cases involving athletes and coaches will be further examined.

The parallel between Title VII sexual harassment liability and Title XI is an important one. In analyzing whether a person was subjected to actionable sexual harassment under Title IX, courts have looked to precedent under Title VII. Federal courts have followed this precedent because the Supreme Court in *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 72, 112 S. Ct. 1028 (1992) and *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 640, 119 S. Ct. 1661, 143 L. Ed. 2d 839 (1999) cited to its Title VII jurisprudence.

In the past, sexual harassment claims in an employment setting (i.e. pursuant to Title VII) (42 U.S.C. 2000e-2(a)(1)) were categorized into two main forms: quid pro quo and hostile environment (See, *Meritor Savings Bank, FSB v. Vinson*, (1986); and *Harris Forklift Systems, Inc.*, (1993)). However, recent cases suggest there are a number of circumstances that do not neatly fit within one of these two categories. This categorization is of particular importance since an employer is strictly liable for quid pro quo sexual harassment. Whereas for hostile environment liability, an employer has affirmative defenses available to it (*Faragher v. City of Boca Raton*, (1998)).

Sexual harassment of one student by another student and by a teacher/coach of a student is pervasive problem in the United States (Hoehne, 2006). Sexual harassment has also been recognized as discrimination on the basis of sex under Title IX (Franklin, 1992). Thus, in the sport industry, those sport managers working in any school or collegiate setting must be familiar with the legal mandate under both Title VII relative to employees; and Title IX regarding student to student sexual harassment and teacher/coach to student sexual harassment. The claims under Title VII and Title IX have significant differences relating to (1) the underlying cause of action; (2) institutional, individual, and vicarious liability; and (3) notice and intentionality requirements. Each of these differences will be explored in depth in this presentation. Understanding these differences is vital for administrators to adequately prevent and respond to such claims.

Several recent cases in the sport industry have also created new questions surrounding whether constructive discharge is a tangible job action (*Pennsylvania State Police v. Suders*, 2004) and what standard of liability is appropriate in determining whether the objectionable conduct of a teacher/coach is "sufficiently severe and pervasive" as to deprive the student of educational benefits (*Jennings v. University of North Carolina*, 2006) and when do prior acts of the alleged harasser create sufficient "notice" upon the educational institution to impose liability (*Escue v. Northern Oklahoma College*, 2006).

Interestingly, these cases also build upon observations made by the Supreme Court in *Oncale v. Sundowner Offshore Services, Inc.* (1998) noting unique aspects of relationships in sport such as those between athletes and coaches that can lead to different result in sexual harassment cases. These unique aspects were summarized by the *Jennings* (2006) court in its observations that "a typical college coach is going to have much more informal, casual, one-on-one contact with a student-athlete than a typical university instructor will have with a student". However, a strong dissenting opinion observed "this more informal atmosphere can, as the majority suggests, serve to normalize conduct, such as cursing or touching, that would be inappropriate in the more formal setting of the classroom or office. On the other hand, the same informal sports setting, coupled with the coach's intensely personal yet authoritative relationship with his athletes, may enhance the potential for sexual harassment. A coach's 'special authority' over athletes and frequent one-on-one contact 'amplify the potential for harassment'".

These divergent opinions emphasize not only the conflict among the courts in resolving these cases, but the importance of the resolution in protecting students (especially student athletes) from an educational environment that is permeated with sex-based degradation, insult, ridicule, and intimidation. These cases and their impact will be discussed.