

**BETH ANN FARGHER v.
CITY OF BOCA RATON (1998)**

Facts

After graduating from high school, Beth decided to work her way through college as a lifeguard at the city beach in Boca Raton, Florida. She worked full time during the summers and part time during the school year. Throughout her five years as a lifeguard, she had several male supervisors. She worked with three to five other women; forty to fifty of the lifeguards were men. After finishing college, Beth quit her job and went on to graduate school.

Throughout her time as a lifeguard, Beth experienced “uninvited and offensive touching,” and heard sexual comments from her supervisors. One of the supervisors threatened to make her clean the toilets for a year if she didn’t date him. She refused. Although she didn’t complain to anyone about what was going on, she filed a sexual harassment lawsuit against the city and the offending supervisors after leaving her job. Beth claimed that their acts created a hostile work environment, which amounted to employment **discrimination**. She also argued that the city failed to prevent the harassment.

You be the Judge

- Do you think that the behavior of Beth’s supervisors was sexual harassment?
- Is the city responsible for what happens among its employees? Why or why not?

The Ruling

While deciding whether to consider Beth’s case, the U.S. Supreme Court reviewed the history of civil rights law and how it applies to the workplace. The Court determine that the Civil Rights Act of 1964 provides protection from sexual harassment at work. The Act reads, in part: “It shall be an unlawful employment practice for an employer... to discriminate against any individual... because of... race, color, religion, sex, or national origin.”

The Court, in a seven to two decision written by Justice David H. Souter, held that sexual harassment so severe as to create an abusive working environment is prohibited. The Court recognized that human behavior oftentimes leads to simple teasing, offhand comments, and even isolated incidents of abusive language or gender-related jokes. These, by themselves, aren’t usually sufficient to claim sexual harassment. *Extreme* conduct, however, is what people are protected against.

The Court requires that all of the circumstances of the work environment be studied in determining whether harassment occurred. This includes (1) the frequency of the discriminating conduct, (2) its severity, (3) whether it’s physically threatening or humiliating, and (4) whether it interfered with an employee’s work performance. All of these factors are considered in a sexual harassment case— as well as whether the employer knew or should have known about the harassment.

Not every act of harassment is held against the owner of a business or company. The Court considers whether the company has a specific policy against harassment and whether all employees are made aware of it. For example, when you start a job, you should be told about your right to raise an issue of harassment if one occurs. On the other hand, it's your duty as an employee to take reasonable care to avoid any harm from a harasser—for example, by reporting all incidents when they occur. (A victim isn't required to confront the abuser but needs to report the abuse to someone in authority, such as a supervisor.)

In Beth's case, the Court created a balancing test in sexual harassment incidents: between the reasonableness of the employer's conduct harassing behavior, and the reasonableness of the employee's behavior in seeking to avoid harm. Because the city in Beth's case didn't make its lifeguards aware of its anti-harassment policy, the city was liable for the supervisors' acts. Beth was awarded \$10,000 against her two supervisors, an addition \$500 against one of the supervisors for punitive damages (money awarded to a victim; intended to punish the defendant), and \$1 against the city of Boca Raton, which was found least liable for the supervisors' behavior. In addition, the city was told to make sure that all city employees are aware of its anti-harassment policy and to develop a sensible complaint procedure for victims of sexual harassment.

In discussing the responsibility of supervisors at work, the Court stated that a “supervisor is clearly charged with maintaining a productive, safe work environment... A pervasively hostile work environment of sexual harassment is never (one would hope) authorized.”

This case is significant because it establishes a standard for determining if certain conduct in the workplace is against the law. It helps employees and employers understand the limits of sexual comments and behavior at work—and helps make it clear that monetary damages are available against the offender *and* the place of employment.

Regardless of your age, you have rights at work. Offensive sexual language or gestures that create a hostile or abusive work environment don't have to be tolerated. As you enter the workforce, be aware that if you're harassed by someone on the job, you can do something about it. Putting up with the abuse allows it to continue—and spread to other victims.