

Legal Norms Before the #MeToo Movement

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Law recognized harassment, but outsourced daily protection to internal policies that many feared to use.

What Laws Existed (Pre-#MeToo)

Before the #MeToo Movement, the primary federal law addressing sexual harassment was Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination “because of sex.” Title VII was enacted to ensure employee protection from discrimination based on sex, but in 1980, the EEOC issued guidance recognizing sexual harassment as sex discrimination, and in 1986, the Supreme Court confirmed that recognition in *Meritor Savings Bank v. Vinson*. While Title VII was the central federal employment law, additional legal avenues, including Title IX (1972), tort laws (battery, assault, intentional infliction of emotional distress), and whistleblower protection laws, also addressed issues of sexual harassment. Despite establishing a legal basis, these laws were often applied unevenly and insufficient in ensuring meaningful protection and accountability for survivors.

Key Supreme Court Cases (1986–1999)

During the 1980s to 1990s, key Supreme Court cases clarified that sexual harassment violated Title VII, recognizing it as a form of discrimination while also revealing gaps in protections for survivors. The case of *Meritor Savings Bank v. Vinson* (1986) involved an employee who claimed repeated sexual harassment by supervisors and a “hostile work **environment**”. As a result of the case, the Supreme Court ruled that harassment does not need to involve economic

change to violate the statute, establishing that a “claim of a hostile work environment” is actionable under Title VII if the conduct is unwelcome and severe or pervasive. Over a decade later, in *Faragher v. City of Boca Raton* (1998), Beth Ann Faragher brought actions against the city, claiming that her supervisors, Bill Terry and David Silverman, had created a “sexually hostile atmosphere,” violating Title VII. The court ruled that the supervisor's conduct was serious enough to constitute an abusive working environment; however, the city could not be held responsible, as the supervisor was not acting under the scope of their employment. The case clarified whether an employer is responsible for supervisor misconduct, while emphasizing the need for anti-harassment policies. That same year, in *Burlington Industries v. Ellerth*, the Supreme Court ruled that employers are vicariously liable for supervisors who create hostile working conditions for those they have the authority to supervise. However, employers can protect themselves if they demonstrate that they took steps to end the harassment and if the victim of the abuse failed to utilize the available complaint procedures. While these cases expanded recognition of sexual harassment under Title VII, they also created new barriers that made it more difficult for employees to receive proper protection.

EEOC Guidance—Influential but Nonbinding

While the Supreme Court rulings shaped sexual harassment law, the application of Title VII was influenced by the EEOC’s policy interpretations. In 1980, sexual harassment was officially defined as a form of sex discrimination under Title VII, laying the guidelines for the two main forms of harassment, “quid pro quo” and “hostile work environment,” clarifying that sexual harassment violates the statute. In 1997, the EEOC further explained that harassment includes unwelcome conduct that affects an individual's employment, unreasonably interferes with one's job performance, and/or creates an offensive, intimidating, or hostile work environment.

However, the EEOC guidelines are not legally binding. In the 1997 fact sheet, the EEOC states that “the contents of this document do not have the force and effect of law and are not meant to bind the public in any way.” The statement reveals that the EEOC’s policies act primarily as a resource, rather than a legally binding document. So, while EEOC guidance helped translate Title VII into workplace practice, its nonbinding nature limited real-world protection when employers failed to act.

Other Avenues (Title IX, Torts, Whistleblower)—Why They Fell Short

While Title VII was the only federal law and the central form of protection at that time, other legal avenues, such as Title IX, tort Laws, and whistleblower protections, existed; however, they were often limited in their scope and effectiveness. In 1972, Title IX was established under the Education Amendment. It stated that all federally funded education programs are required to enforce Title IX, which prohibits sex-based harassment, sexual violence, pregnancy discrimination, sex-based discrimination in courses and programs, and more. Unfortunately, enforcement is rarely carried out, and violations are often left unaddressed, allowing systemic injustices in education systems to persist without institutional reform. In addition to Title IX, Tort laws offer an alternative legal avenue. Tort laws protect individuals under civil laws, which expand but are not limited to intentional infliction of emotional distress, battery, and assault. Because Torts are defined by common law, legal enforcement is left to the judges; whether something qualifies as a legal wrong is subject to interpretation, leading to unpredictability and inconsistency in decisions. Even when successful, Tort Laws address individual claims and fail to address the systemic issues at play. Finally, the Whistleblower Protection Act of 1989 protects federal employees from retaliation if they report employer wrongdoing. Employees can’t be demoted, fired, or retaliated against for making a protected claim. Despite this, these protections

only apply to a select group of federal employees and industries, rather than all employees, and do not directly target sexual harassment. While these tools theoretically provide additional protection for survivors, in reality, they leave significant gaps in protection, offering survivors narrow coverage and limited systemic enforcement.

Net Effect: Recognition with Escape Hatches

Although Title VII, Title IX, Tort laws, and Whistleblower Protections theoretically provided individuals with protection from sexual harassment, their structural limitations left survivors without proper legal avenues to protect themselves. Title VII was constrained by employer protection and non-binding EEOC guidelines. Title IX enforcement was not mandated, allowing systemic injustice to persist without punishment. Tort Laws were subject to judicial interpretation, leading to inconsistent results. While also addressing the individual's claim rather than the underlying issue. Finally, whistleblower protections applied only to a narrow scope of federal employees and didn't directly address sexual harassment. Collectively, these legal gaps and the failure of enforcement left survivors without legal avenues and proper protection, underscoring the need for legislative change and ultimately setting the stage for the #MeToo movement.