



STRENGTHENING  
WORKPLACE

# Sexual Assault Claims

Tamarah Prevost

## Adding an employment claim to a sexual assault case can strengthen your client's case and expand their recovery options. Here's how to spot this scenario and avoid common pitfalls.

**W**hen a client walks into your office claiming sexual assault by a co-worker or supervisor, your first instinct may be to file a straightforward intentional tort case. But overlooking the employment law claims hiding in plain sight can mean leaving leverage and recovery that your clients deserve on the table.

Civil tort claims often form the core of these cases.

- Assault is the intentional act of placing another in reasonable fear of harmful or offensive contact.<sup>1</sup>
- Battery is intentional, unwanted, harmful, or offensive touching.<sup>2</sup>
- Sexual assault, in civil cases, is typically treated as a form of battery when the offensive contact is sexual in nature.<sup>3</sup>

These claims focus on the assailant's conduct and can offer direct liability, but they aren't always the most effective path to recovery, especially if the assailant lacks resources or insurance.

### **Corresponding Claims**

When an assault happens in the workplace, there is often a corresponding employment law claim under Title VII of the Civil Rights Act of 1964, or a state equivalent, which prohibits discrimination based on sex.<sup>4</sup> Most state laws mirror Title VII and offer similar protection.

**Types of sexual harassment.** Courts recognize two types of sexual harassment: hostile work environment and quid pro quo. To establish a hostile work environment claim, the plaintiff must show that the verbal or physical conduct was unwelcome, based on sex, and severe or pervasive

enough to alter the conditions of employment and create an abusive working environment.<sup>5</sup> A single, serious act of sexual assault can meet this threshold.<sup>6</sup>

Quid pro quo harassment occurs when the assailant demands or makes unwelcome requests for sexual favors as a condition of employment or the basis for employment decisions.<sup>7</sup> The plaintiff must prove that they are a member of a protected group, the conduct was unwelcome, the harassment was based on sex, refusing the unwelcome harassment posed a threat to the plaintiff's employment, and there are grounds to hold the employer liable.<sup>8</sup>

**Employer liability.** Employer liability under Title VII depends on the relationship between the assailant and the employee. If a supervisor's harassment leads to a tangible, adverse employment action—such as a termination or demotion—the employer is liable.

If there is no tangible employment action, the employer can raise an affirmative defense and is liable only if it knew or should have known about the conduct and failed to take prompt, reasonable steps to prevent and correct the harassment.<sup>9</sup>

Some states, however, impose strict liability for supervisor harassment, even without a tangible employment action.<sup>10</sup>

Courts across the country have held that physical sexual assault by a co-worker or supervisor is classic hostile work environment harassment.<sup>11</sup> When harassment involves assault of a co-worker by a co-worker, employers are liable under a negligence standard if they knew or should have known of the harassment and failed to take immediate and appropriate corrective action.<sup>12</sup>

**How the claims work together.** Intentional torts target the perpetrator directly—and potentially the employer under theories like negligent hiring, negligent retention, or respondeat superior (if the assault was within the scope of employment, which is rare). A standalone tort claim often doesn't allow your client to get full recovery, particularly if an assailant lacks insurance.

Workplace sexual harassment claims target the employer, often based on strict liability for supervisor

harassment or negligence for co-worker harassment. Some jurisdictions also permit harassment claims against both the assailant and the employer.

The key takeaway is that the same set of facts—an assault—will likely generate at least two claims: a tort claim for the direct battery by the individual and an employment claim for harassment by both the individual and the employer.

Sexual assault in the workplace nearly always supports both a tort claim and an employment claim. The benefits of including the employment claim are significant.

#### ***Employer insurance coverage.***

Employers often carry employment practices liability insurance, which may cover sexual assault claims—even when it excludes intentional torts. This opens an additional path to recovery from a solvent party.

**Expanded damages.** Title VII allows recovery of back pay, front pay, emotional distress, and, in some cases, punitive damages.<sup>13</sup> While Title VII caps damages at \$300,000, depending on employer size,<sup>14</sup> many state laws have no such limits.

**Attorney fees.** Title VII includes a fee-shifting provision.<sup>15</sup> Prevailing plaintiffs can recover reasonable attorney and expert fees.<sup>16</sup>

There can be other advantages to bringing both sets of claims concurrently.

In one of my sexual assault/employment crossover cases, the defendant employer was headquartered out of state, and we were concerned the case could be removed for diversity jurisdiction. However, the individual assailant, who we were also able to name as a defendant for the sexual assault claim, lived locally to my client and defeated "complete diversity," preventing removal to federal court. This was a key procedural advantage.

In another crossover case, discovery revealed that the assailant—a rainmaker for the company—had repeatedly been accused of sexual assault in the past. However, the allegations were either not investigated at all or only cursory, with the victim never even interviewed and the company ultimately "clearing" the assailant of all wrongdoing. Testimony from the other accusers and the company's lack of investigation, coupled with retaliation against the



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plaintiff for her reports, provided a basis for punitive damages at trial.

## Potential Roadblocks

Before asserting employment claims, you should be aware of several challenges.

**Workers' compensation preemption.** Most states bar tort claims for workplace injuries through workers' comp laws. However, intentional torts like sexual assault often fall outside this bar.<sup>17</sup> Analyze whether your jurisdiction allows tort or negligence claims against employers in these cases.

**Vicarious liability.** Employers are rarely liable under respondeat superior for sexual assaults, which courts often find to be outside the scope of employment.<sup>18</sup> That's why Title VII claims are so crucial: They can impose employer liability without requiring proof that the conduct was within the scope of employment.

**Administrative exhaustion.** A Title VII claim requires filing a charge with the Equal Employment Opportunity Commission or an equivalent state agency before filing suit.<sup>19</sup> If your client misses the filing deadline, the claim may be barred. That said, some states have more generous statutes of limitations.

For example, in California, a plaintiff has three years to exhaust administrative remedies.<sup>20</sup> In some cases, this longer window can revive a claim after the tort statute of limitations has run.

Not every workplace sexual assault case needs an employment law claim. But when the assault occurs at work and the perpetrator is a co-worker or supervisor, adding a Title VII or state law harassment claim often strengthens the case—and expands recovery options. ■



**Tamarah Prevost** is a partner with Altair Law in San Francisco and can be reached at [tprevost@altairlaw.com](mailto:tprevost@altairlaw.com).

### NOTES

1. See, e.g., *Cullison v. Medley*, 570 N.E.2d 27, 30 (Ind. 1991); *Thing v. La Chusa*, 771 P.2d 814, 866 (Cal. 1989); *Kuznitz v. Funk*, 187 A.D.3d 1006, 1006 (N.Y. App. Div. 2020) (assault requires proof that someone's behavior causes another person to reasonably fear imminent physical harm).
2. See *Leichtman v. WLW Jacor Commc'n, Inc.*, 634 N.E.2d 697, 698–99 (Ohio Ct. App. 1994); *Lawson v. Bloodsworth*, 722 S.E.2d 358, 358 (Ga. Ct. App. 2012) (battery is any offensive, unlawful touching, however slight); *Piedra v.*

*Dugan*, 123 Cal. App. 4th 1483, 1495 (Cal. Ct. App. 2004) (battery involves intentionally making unlawful and harmful physical contact with another person). California also provides a civil cause of action for sexual battery. See Cal. Civ. Code §1708.5 (West 2023).

3. See generally *Angie M. v. Superior Ct.*, 37 Cal. App. 4th 1217, 1224–25 (Cal. Ct. App. 1995).

4. 42 U.S.C. §§2000e–2000e-17 (2018).

5. See *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986) (recognizing hostile work environment claims under Title VII); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21–22 (1993) (psychological harm is not required for a sexual harassment claim under Title VII—an environment need only be both objectively and subjectively hostile or abusive).

6. *Hush v. Cedar Fair, L.P.*, 233 F. Supp. 3d 598, 604 (N.D. Ohio 2017) (“In the Sixth Circuit, a single act of sexual assault . . . suffices to allege an actionable claim for creation of a sex-based hostile work environment.”).

7. See, e.g., *Marchioni v. Bd. of Educ. of City of Chicago*, 341 F. Supp. 2d 1036, 1043 (N.D. Ill. 2004).

8. *Hanna v. Cangshan Cutlery Co.*, 767 F. Supp. 3d 384, 391 (W.D. Tex. 2025).

9. See, e.g., *Faragher v. City of Boca Raton*, 524 U.S. 775, 798 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 759 (1998).

10. State laws do not uniformly mirror Title VII. Some are more employee-friendly and apply distinct legal standards. See, e.g., *State Dept. of Health Servs. v. Superior Ct.*, 79 P.3d 556, 562 (Cal. 2003) (under California's Fair Employment and Housing Act, employers are strictly liable for supervisor harassment, regardless of any tangible employment action); *Lehmann v. Toys 'R' Us, Inc.*, 626 A.2d 445, 460 (N.J. 1993) (New Jersey applies strict liability for equitable relief; agency principles, including negligence, govern compensatory damages beyond equitable relief; punitive damages require more than negligence).

11. See *Turner v. Barr*, 811 F.2d 161, 165 (D.C. Cir. 1987); *Little v. Windermere Relocation, Inc.*, 301 F.3d 958, 967–68 (9th Cir. 2002) (sexual assault constitutes sex-based discrimination sufficient to support a hostile work environment claim).

12. *State Dep't of Health Servs.*, 79 P.3d at 449.

13. See 42 U.S.C. §1981a(b)(3) (2018) (damages caps vary by employer size).

14. *Id.*

15. §2000e-5(k).

16. *Id.*

17. See, e.g., *Doe v. Grand Villa of New Port Richey*, 540 F. Supp. 3d 1168, 1172 (M.D. Fla. 2021) (“Public policy requires that employers be held accountable in tort for the sexually harassing environments they permit to exist.”); *Black v. City & Cnty. of Honolulu*, 112 F. Supp. 2d 1041, 1047 (D. Haw. 2000) (workers' compensation exclusivity does not bar claims for sexual harassment, sexual assault, infliction of emotional distress, or invasion of privacy).

18. See, e.g., *Powell v. City of Chicago*, 197 N.E.3d 219, 225 (Ill. App. Ct. 2021).

19. §2000e-5(e)(1) (charge must be filed within 180 or 300 days); *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 109 (2002) (restating the 300-day requirement, but holding the claim timely, as long as at least one act contributing to the hostile work environment occurred within that 300-day period).

20. See Cal. Gov't Code §12960(e)(5) (West 2023).