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She faxed a letter giving reasons unrelated to theSlowiks behavior. Ibid. During her tenure at Burlington, Ellerth did not inform anyone in authorityEmployment Opportunity Commission EEOC, Ellerth filed suit in the United. States District Court for the Northern District of Illinois, alleging. Burlington engaged in sexual harassment and forced her constructive discharge,The District Court granted summary judgment to. Burlington. The court found Slowiks behavior, as described by Ellerth, severeThere was no triableBurlingtons internal complaint procedures. Id., at 1118. Although Ellerths claim wasDistrict Court thought it necessary to apply a negligence standard because the quidEllerths constructive discharge claim. The Court of Appeals en banc reversed in a decision which produced eight separateThe judges were able toBurlington on appeal. The judges seemed to agree Ellerth could recover if. Slowiks unfulfilled threats to deny her tangible job benefits was sufficient. America, 123 F.3d 490, 494 C.A.7With the exception of Judges Coffey and. Easterbrook, the judges also agreed Ellerths claim could be categorized as oneDiane P. Wood, agreed the proper standard was vicarious liability, and so. Ellerth could recover even though Burlington was not negligent. Ibid. They hadAccording to Judges Flaum, Cummings. Bauer, and Evans, whether a claim involves a quid pro quo determinesEllerth had stated a quid pro quo claim, but negligence was theHe asserted EllerthJudge Posner also found Ellerth failed to create a triable issue of fact as toAppeals reflects the fact that Congress has left it to the courts to determineWe granted certiorari to assist in defining the relevant standards of employerL.Ed.2d 865 1998. It is a premiseThe premise is A trier of fact could find in. Slowiks remarks numerous threats to retaliate against Ellerth if she

deniedThe threats, however, were not carried out or fulfilled.http://www.latgalesamatnieki.lv/files/consew-255rb-2-manual.xml

Cases based on threats which are carried out are referred to often as quidThe terms quid pro quo and hostile work environment are helpful,The terms appeared first in the academicSee generally E. Scalia, The Strange Career of Quid Pro Quo SexualThere we considered whether theWe assumed, and with adequate reason,The distinction was not discussed for its bearing upon an employers liabilityOn this question Meritor held,The standard of employer responsibility turned. If the plaintiffSee Davis v. Sioux City, 115 F.3d 1365, 1367 C.A.8 1997; Nichols v. Frank, 42 F.3d 503, 513514 C.A.9 1994; Bouton v. BMW of North America. Inc., 29 F.3d 103, 106107 C.A.3Inc., 970 F.2d 178, 185186 C.A.6, Shipbuilding, Inc., 867 F.2d 1311,The equivalence of the quid pro quo labelThe question presented onWhen a plaintiff proves that aFor any sexual harassment preceding theSee Oncale v. Sundowner Offshore. Services, Inc., 523 U.S. 75, 81, 118. S.Ct. 998, 1002 1003, 140 L.Ed.2d 201, 1998; Harris v. Forklift Systems. Inc., 510 U.S. 17, 21, 114 S.Ct. 367,See supra, at 22622263. The case before us involves numerous allegedThat is the questionNonViolence v. Reid, 490 U.S. 730,This is not federal commonInc., 72 Wash.App. 531, 537539, 864. P.2d 983, 986988 1994. As Meritor Restatement is a useful beginning point for a discussion of general agencySexual harassment under Title VII presupposesIn applying scope of employmentFor example, when aSee Prosser and Keeton on. As Courts of Appeals have recognized, a supervisor acting out of genderbasedL.Ed.2d 732 1998; Torres v. Pisano, 116 F.3d 625, 634, n. 10 C.A.2 1997. ButInc., 970 F.2d, at 184 185 The harassing supervisor often acts for personal motives, motives unrelated andCommn, 766 F.Supp.

1052, 1075The concept of scope of employment has not always been construed to require aFederal Tort Claims Act, which makes the Federal Government liable for tortsThe principles are setSubsection a addresses direct liability, where the employer acts withNone of the parties contend. Slowiks rank imputes liability under this principle. There is no contention,Negligence sets a minimumSection 2192d concerns vicarious liability for intentional torts committedIn the usual case, aApparent authority analysis therefore is inappropriateProximity and regular contact may afford a captive pool of potential victims. See Gary v. Long, 59 F.3d 1391, 1397 C.A.D.C.1995. WereCenters, Inc., 123 F.3d 868, 872L.Ed.2d 105 1998 sex discrimination; McKenzie v. Illinois Dept. of. Transp., 92 F.3d 473, 480 C.A.7The aided in the agencyAt the outset, we can identify a class of cases where, beyond question, moreAlthough few courts have elaborated how agencyIn the context of this case, a tangible employment action would have taken theThe concept of a tangibleA tangible employment actionCompare Crady v. Liberty Nat. BankInstitute, 31 F.3d 451, 456 C.A.7. Inc., 97 F.3d 876, 887 C.A.6 1996 Corp., 37 F.3d 379, 382 C.A.8 1994 When a supervisor makes a tangible employment decision, there is assurance theA coworker canTangible employment actions are the means by which the supervisor brings theA tangible employmentThe supervisor often must obtain theAppliance Center, Inc., 957 F.2d 59,See, supra, at 2268. Whether the agency relation aids in commission of supervisor harassment which doesApplication ofSee Meritor, 477 U.S., at 77, 106 S.Ct., at 24102411 On the otherIt is this tension which, we think, has caused so much confusion among the. Courts of Appeals which have sought to apply the aided in the agency relationThe aided in the agency relation standard,In particular, we are bound by our holding in Meritor that agencyCongress hasCo. v. Illinois, 431 U.S.

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720, 736, 97Although Meritor For example, Title VII is designed toWere employer liability to depend in part on an employers effort to createL.Ed.2d 41 1984, and the EEOCs policy of encouraging the. EEOC Policy Guidance on Sexual Harassment, 8 BNA FEP Manual 4056699 Mar. 19,See McKennon v. Nashville Banner. Publishing Co., 513 U.S. 352, 358,Title VII borrows from tort law the avoidable consequences doctrine, see Ford Motor Co. v. EEOC, 458 U.S. 219, 232, n. 15, 102 S.Ct. 3057, 3066,

n.The defense comprises two necessary elements a that the employer exercisedWhile proof that an employer hadAnd while proof that an employeeGiven our explanationSee supra, atOn remand, the. District Court will have the opportunity to decide whether it would beThe judgment of the Court of Appeals is affirmed. It is so ordered. Justice GINSBURG, concurring in the judgment.The Court today manufactures a rule that employers are vicariously liable ifThis rule appliesAs a result, employerThe principal opinion in the case concluded that employment discrimination wasEmployment Discrimination Law 1011 3d ed.1996. A hostile environment claimThis is the sameInc., 510 U.S. 17, 21, 114 S.Ct. 367,In race discrimination cases, employer liability has turned on whether theIf a supervisor takes an adverseIf, on the other hand, theL.Ed.2d 1028 1989. Liability has thus been imposed only if theHis acts, therefore, are the companys acts and are properly chargeable to it. See 123 F.3d 490, 514 C.A.7 1997 The supervisor hasFor example, when the Court of Appeals for the. District of Columbia Circuit held that a work environment poisoned by a. Judge Goldbergs opinion in Rogers v. EEOC, 454 F.2d 234 C.A.5 1971. See Bundy v. Jackson, 641 F.2d 934, 944 C.A.D.C.1981; see alsoVinson, 477 U.S. 57, 106 S.Ct. 2399,VII for sexual harassment. See id., at 6566, 106 S.Ct., at 24042405.

Indeed, a hostile workI do not, however, agree that theAs one court recognized in addressingBut once an employer has in good faithAlthough respondent alleged a hostile workThe company had a policy againstThis rule is a wholecloth creation that draws noCompounding its error, the Court fails to explain how employers can rely uponIn justifying its holding, the Court refers to our comment in Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 106 S.Ct. 2399, 91The Court finds two portions of the Restatement toIndeed, the Court admits as much in demonstrating why sexual harassment is notThe only agency principle that justifies imposingSee supra, at 2273. The Courts decision is also in considerable tension with our holding in Meritor thatSee Meritor Savings Bank, FSB v. Vinson, supra, at 72, 106 S.Ct., atInstead, it issues only Delphic pronouncements andMoreover, employers will be liableVinson, supra, at 72, 106 S.Ct., atIt thus trulyI would restore parallelBack to Module III Introduction. The Courts only discussion to date of the standards of employer liability came in Meritor, supra, where the Court held that traditional agency principles were relevant for determining employer liability. This tension is the result of differing judgments about the desirability of holding an employer liable for his subordinates wayward behavior. The proper analysis here, then, calls not for a mechanical application of indefinite and malleable factors set forth in the Restatement, but rather an inquiry into whether it is proper to conclude that sexual harassment is one of the normal risks of doing business the employer should bear. An employer can reasonably anticipate the possibility of sexual harassment occurring in the workplace, and this might justify the assignment of the costs of this behavior to the employer rather than to the victim. Two things counsel in favor of the contrary conclusion, however.

First, there is no reason to suppose that Congress wished courts to ignore the traditional distinction between acts falling within the scope of employment and acts amounting to what the older law called frolics or detours from the course of employment. Second, the lower courts, by uniformly judging employer liability for coworker harassment under a negligence standard, have implicitly treated such harassment outside the scope of employment. It is unlikely that such treatment would escape efforts to render them obsolete if the Court held that harassing supervisors necessarily act within the scope of their employment. The rationale for doing so would apply when the behavior was that of coemployees, because the employer generally benefits from the work of common employees as from the work of supervisors. The answer to this argument might be that the scope of supervisory employment may be treated separately because supervisors have special authority enhancing their capacity to harass and the employer can guard against their misbehavior more easily. This answer,

however, implicates an entirely separate category of agency law, considered in the next section. There are two basic alternatives to counter the risk of automatic liability. The first is to require proof of some affirmative invocation of that authority by the harassing supervisor; the second is to recognize an affirmative defense to liability in some circumstances, even when a supervisor has created the actionable environment. The problem with the first alternative is that there is not a clear line between the affirmative and merely implicit uses of supervisory power; such a rule would often lead to close judgment calls and results that appear disparate if not contradictory, and the temptation to litigate would be hard to resist.

The second alternative would avoid this particular temptation to litigate and implement Title VII sensibly by giving employers an incentive to prevent and eliminate harassment and by requiring employees to take advantage of the preventive or remedial apparatus of their employers. An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate or successively higher authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence. See Fed. Rule Civ. Proc. 8c. The defense comprises two necessary elements a that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and b that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. While proof that an employer had promulgated an antiharassment policy with complaint procedure is not necessary in every instance as a matter of law, the need for a stated policy suitable to the employment circumstances may appropriately be addressed in any case when litigating the first element of the defense. And while proof that an employee failed to fulfill the corresponding obligation of reasonable care to avoid harm is not limited to showing an unreasonable failure to use any complaint procedure provided by the employer, a demonstration of such failure will normally suffice to satisfy the employers burden under the second element of the defense.

The District Court found that the degree of hostility in the work environment rose to the actionable level and was attributable to Silverman and Terry, and it is clear that these supervisors were granted virtually unchecked authority over their subordinates and that Faragher and her colleagues were completely isolated from the Citys higher management. While the City would have an opportunity to raise an affirmative defense if there were any serious prospect of its presenting one, it appears from the record that any such avenue is closed. The District Court found that the City had entirely failed to disseminate its sexual harassment policy among the beach employees and that its officials made no attempt to keep track of the conduct of supervisors, and the record makes clear that the Citys policy did not include any harassing supervisors assurance that could be bypassed in registering complaints. Under such circumstances, the Court holds as a matter of law that the City could not be found to have exercised reasonable care to prevent the supervisors harassing conduct. Although the record discloses two possible grounds upon which the City might seek to excuse its failure to distribute its policy and to establish a complaint mechanism, both are contradicted by the record. The City points to nothing that might justify a conclusion by the District Court on remand that the City had exercised reasonable care.In June 1990, Faragher resigned. Silverman was a Marine Safety lieutenant from 1985 until June 1989, when he became a captain. Id., at 1555. Gordon began the employment period as a lieutenant and at some point was promoted to the position of training captain. In these positions, Silverman and Gordon were responsible for making the lifeguards daily assignments, and for supervising their work and fitness training. Id., at 1564. He was supervised by the Recreation Superintendent, who in turn reported to a Director of Parks and

Recreation, answerable to the City Manager. Id.

, at 1555. The lifeguards had no significant contact with higher city officials like the Recreation Superintendent. Id., at 1564. During a job interview with a woman he hired as a lifeguard, Terry said that the female lifeguards had sex with their male counterparts and asked whether she would do the same. Ibid. He once tackled Faragher and remarked that, but for a physical characteristic he found unattractive, he would readily have had sexual relations with her. Ibid. Another time, he pantomimed an act of oral sex. Ibid. Within earshot of the female lifeguards, Silverman made frequent, vulgar references to women and sexual matters, commented on the bodies of female lifeguards and beachgoers, and at least twice told female lifeguards that he would like to engage in sex with them. Id., at 15571558. The court read the District Courts opinion to rest on an erroneous legal conclusion that any harassment pervasive enough to create a hostile environment must a fortiori also suffice to charge the employer with constructive knowledge. Id., at 1538. Rejecting this approach, the court reviewed the record and found no adequate factual basis to conclude that the harassment was so pervasive that the City should have known of it, relying on the facts that the harassment occurred intermittently, over a long period of time, and at a remote location. Ibid. In footnotes, the court also rejected the arguments that the City should be deemed to have known of the harassment through Gordon, id., at 1538, n. 9, or charged with constructive knowledge because of its failure to disseminate its sexual harassment policy among the lifeguards, id., at 1539, n. 11. Given the circumstances of many of the litigated cases, including some that have come to us, it is not surprising that in many of them, the issue has been joined over the sufficiency of the abusive conditions, not the standards for determining an employers liability for them.

In such instances, the combined knowledge and inaction may be seen as demonstrable negligence, or as the employers adoption of the offending conduct and its results, quite as if they had been authorized affirmatively as the employers policy. Cf. Oncale, supra, at , 118 S.Ct., at 1001 victim reported his grounds for fearing rape to companys safety supervisor, who turned him away with no action on complaint. Others have suggested that vicarious liability is appropriate because the supervisor who discriminates in this manner is aided by the agency relation. See, e.g., Nichols v. Frank, 42 F.3d 503, 514 C.A.9 1994. Finally, still other courts have endorsed both of the latter two theories. See, e.g., Harrison, 112 F.3d, at 1443; Henson, 682 F.2d, at 910. And the force of precedent here is enhanced by Congresss amendment to the liability provisions of Title VII since the Meritor decision, without providing any modification of our holding.It considered whether the two supervisors were acting within the scope of their employment when they engaged in the harassing conduct. The court then inquired whether they were significantly aided by the agency relationship in committing the harassment, and also considered the possibility of imputing Gordons knowledge of the harassment to the City. Finally, the Court of Appeals ruled out liability for negligence in failing to prevent the harassment. Faragher relies principally on the latter three theories of liability.PCS1 Here it is enough to recognize that their disparate results do not necessarily reflect wildly varying terms of the particular employment contracts involved, but represent differing judgments about the desirability of holding an employer liable for his subordinates wayward behavior.

In the instances in which there is a genuine question about the employers responsibility for harmful conduct he did not in fact authorize, a holding that the conduct falls within the scope of employment ultimately expresses a conclusion not of fact but of law. Older cases, for example, treated smoking by an employee during working hours as an act outside the scope of employment, but more recently courts have generally held smoking on the job to fall within the scope. We simply understand smoking differently now and have revised the old judgments about what ought to be done about it. It is by now well recognized that hostile environment sexual harassment by supervisors and, for that matter, coemployees is a persistent problem in the workplace. An employer can, in a general sense, reasonably anticipate the possibility of such conduct occurring in its workplace, and one might

justify the assignment of the burden of the untoward behavior to the employer as one of the costs of doing business, to be charged to the enterprise rather than the victim.First, there is no reason to suppose that Congress wished courts to ignore the traditional distinction between acts falling within the scope and acts amounting to what the older law called frolics or detours from the course of employment. Such a distinction can readily be applied to the spectrum of possible harassing conduct by supervisors, as the following examples show. First, a supervisor might discriminate racially in job assignments in order to placate the prejudice pervasive in the labor force. Instances of this variety of the hecklers veto would be consciously intended to further the employers interests by preserving peace in the workplace. Next, supervisors might reprimand male employees for workplace failings with banter, but respond to womens shortcomings in harsh or vulgar terms.

A third example might be the supervisor who, as here, expresses his sexual interests in ways having no apparent object whatever of serving an interest of the employer. If a line is to be drawn between scope and frolic, it would lie between the first two examples and the third, and it thus makes sense in terms of traditional agency law to analyze the scope issue, in cases like the third example, just as most federal courts addressing that issue have done, classifying the harassment as beyond the scope of employment. Those courts have held not only that the sort of harassment at issue here was outside the scope of supervisors authority, but, by uniformly judging employer liability for coworker harassment under a negligence standard, they have also implicitly treated such harassment as outside the scope of common employees duties as well.The rationale for placing harassment within the scope of supervisory authority would be the fairness of requiring the employer to bear the burden of foreseeable social behavior, and the same rationale would apply when the behavior was that of coemployees. The employer generally benefits just as obviously from the work of common employees as from the work of supervisors; they simply have different jobs to do, all aimed at the success of the enterprise. As between an innocent employer and an innocent employee, if we use scope of employment reasoning to require the employer to bear the cost of an actionably hostile workplace created by one class of employees i.e., supervisors, it could appear just as appropriate to do the same when the environment was created by another class i.e., coworkers. But this answer happens to implicate an entirely separate category of agency law to be considered in the next section, which imposes vicarious liability on employers for tortious acts committed by use of particular authority conferred as an element of an employees agency relationship with the employer.

Since the virtue of categorical clarity is obvious, it is better to reject reliance on misuse of supervisory authority without more as irrelevant to scopeofemployment analysis.PCS2 Thus, she maintains that power conferred on Terry and Silverman by the City enabled them to act for so long without provoking defiance or complaint. When a person with supervisory authority discriminates in the terms and conditions of subordinates employment, his actions necessarily draw upon his superior position over the people who report to him, or those under them, whereas an employee generally cannot check a supervisors abusive conduct the same way that she might deal with abuse from a coworker.That rationale must, however, satisfy one more condition. To counter it, we think there are two basic alternatives, one being to require proof of some affirmative invocation of that authority by the harassing supervisor, the other to recognize an affirmative defense to liability in some circumstances, even when a supervisor has created the actionable environment. That is the way some courts have viewed the familiar cases holding the employer liable for discriminatory employment action with tangible consequences, like firing and demotion. And we have already noted some examples of liability provided by the Restatement itself, which suggests that an affirmative misuse of power might be required.How far from the course of ostensible supervisory behavior would a company officer have to step before his orders would not reasonably be seen as actively using authority. Judgment calls would often be close, the results would often seem disparate even if not demonstrably contradictory, and the temptation to litigate would be hard to resist. We think plaintiffs and defendants alike would be poorly served by an activeuse rule. This composite defense

would, we think, implement the statute sensibly, for reasons that are not hard to fathom.

Indeed, a theory of vicarious liability for misuse of supervisory power would be at odds with the statutory policy if it failed to provide employers with some such incentive. An employer may, for example, have provided a proven, effective mechanism for reporting and resolving complaints of sexual harassment, available to the employee without undue risk or expense. If the plaintiff unreasonably failed to avail herself of the employers preventive or remedial apparatus, she should not recover damages that could have been avoided if she had done so. If the victim could have avoided harm, no liability should be found against the employer who had taken reasonable care, and if damages could reasonably have been mitigated no award against a liable employer should reward a plaintiff for what her own efforts could have avoided. An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate or successively higher authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence, see Fed. Rule. Civ. Proc. 8c. The defense comprises two necessary elements a that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and b that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. While proof that an employer had promulgated an antiharassment policy with complaint procedure is not necessary in every instance as a matter of law, the need for a stated policy suitable to the employment circumstances may appropriately be addressed in any case when litigating the first element of the defense.