

Overview of Differences Between Title VII and Title IX.

Sexual harassment and abuse are real issues that everyone potentially faces--employer, employee, co-worker, coach, trainer, clinician, athlete, teammate, student, opposite sex or same sex. Sexual harassment/abuse can be a single incidence or multiple incidences (Velasques & Drummond, 2003). The sports environment may be particularly susceptible to sexual harassment/abuse incidences due to the power and social structure of teams and relationships between teammates, and coaches/staff to athletes (Parent & Demers, 2011). One must also contend with the risks of exposure to volunteers, other teams, and a wide array of people at sporting and competitive events (Parent & Demers, 2011). Athletic departments need to be very clear about the issues involving sexual harassment/abuse and incorporate it into their risk management plan. However as Hogan (2006) noted, many college athletic administrators lack an understanding of the laws and therefore are unable to provide the leadership necessary to educate their colleagues and students.

Providing widespread education and resources about sexual harassment/abuse would seem to be the first line of defense against the problem until one realizes the complexities and nuances of the sexual harassment laws namely Title VII of the Civil Rights Act in 1964 and Title IX of the Education Amendments (Moorman & Masteralexis, 2008). Title VII and Title IX (which borrows from VII) differ in some important ways although both address sexual harassment.

Title VII of the Civil Rights Act addresses employment discrimination/harassment such as employer to employee or supervisor to supervisee (Moorman & Masteralexis, 2008). Title IX of the Education Amendments addresses sexual harassment/discrimination in educational programs/activities such as sexual harassment between students and teacher/coach to student (Moorman & Masteralexis, 2008).

Title VII of the Civil Rights Act is broader in that it includes discriminations based on race, national origin, religion and amended to include pregnancy and medication conditions (Harper, 2012). Title VII is applicable to private and public entities with 15 or more employees whereas the number of employees is irrelevant in Title IX of the Education Amendments (Harper, 2012).

The focus of claims under Title VII of the Civil Rights Act deals with issues related to discrimination in the employment setting. Sexual harassment is one such discrimination including quid pro quo (specifically between a supervisor/authority and a subordinate) sexual harassment and hostile environment (supervisor or co-worker) sexual harassment (Moorman & Masteralexis, 2008). In quid pro quo sexual harassment, the outcome of an individual's employment or employment status is dependent on whether a sexual demand/solicitation from the supervisor is met (Moorman & Masteralexis, 2008). In a hostile environment sexual harassment, "severe or pervasive" verbal or physical conduct impacts the victim's employment and creates an abusive working environment (Moorman & Masteralexis, 2008). Also as a result of Title VII, the employer may be held responsible for the acts of an employee (perpetrator) if the employer does not take appropriate action to immediately correct and address the situation (Moorman & Masteralexis, 2008). Liability sits with the employers via respondeat superior.

Claims under Title VII are first filed with the federal Equal Employment Opportunity Commission (EEOC) or a partnered local human rights agency (Harper, 2012). The EEOC must approve and give a Right-to-Sue notice to the complainant before a lawsuit may be filed (Harper, 2012). While Title VII claims require an extra approval step by the EEOC, there have been more Title VII lawsuits than Title IX (Harper, 2012). It is important to choose the most appropriate route relative to the situation.

The focus of claims under Title IX of the Education Amendments deals with sexual harassment in educational programs/activities. The criteria of a claim is that the plaintiff must have been a student at an institution receiving federal funds; the plaintiff was harassed based on his/her sex; the harassment was "severe or pervasive" thus creating an abusive environment/situation; there are reasonable grounds for suit against the institution (Moorman & Masteralexis, 2008). Liability under Title IX sits with the institution only if the institution had knowledge of the problem and grossly failed (gross indifference) to address and correct the situation (Moorman & Masteralexis, 2008). Institutions are not necessarily responsible for their employees/agents (respondeat superior does not hold). While Title VII specifically defines the "employer" entity to include agents of the employer, Title IX has no language to specify or include "agents" of the institution (Moorman & Masteralexis, 2008). Title IX claimants may file a lawsuit directly and have the option to also file a complaint at the U.S. Department of Education Office of Civil Rights (OCR) whose responsibility is to enforce Title IX (Harper, 2012). OCR must notify the institution of possible Title IX infractions and encourage the institution to voluntarily address the problem before OCR withdraws funding or other disciplinary measures against the institution are taken (Moorman & Masteralexis, 2008).

An important point is that the aim of Title IX of the Education Amendments is to protect individuals from discrimination by entities receiving federal funding. The aim of Title VII is to provide compensation to victims of discrimination (Moorman & Masteralexis, 2008).

An understanding of the differences between Title VII of the Civil Rights Act and Title IX of the Education Amendments in relation to sexual harassment is important for athletic departments. The consequences of one individual's misconduct should not unduly reflect onto the greater entity. Therefore the employer or educational institution (including athletic departments) must act swiftly to take corrective and preventative measures against sexual harassment.

References

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