

**Pennsylvania State Police v. Suders**  
**542 U.S. S.Ct. \_\_\_\_\_ (June 14, 2004)**

Plaintiff alleged that she was constructively discharged after being sexually harassed by her male supervisors. While she had informed agency's equal employment opportunity officer that she was being harassed, she did not file a complaint according to agency procedures prior to her resignation.

A constructive discharge occurs when a plaintiff can show that he or she was subject to harassing conduct that was so severe that a reasonable person in his or her place would have had no choice but to resign. In *Faragher v. City of Boca Raton* and *Burlington Industries Inc. v. Ellerth*, the Supreme Court had held in 1998 that the employer is strictly liable for the harassing actions of a supervisor that culminate in a "tangible employment action" (such as discharge, demotion, or undesirable reassignment). In those cases, the Court also held that when no tangible job action is taken, the employer can raise an affirmative defense to liability; i.e., the employer must show that it exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and that the plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities or to otherwise avoid harm.

In the *Suders* case, the Supreme Court held that a constructive discharge is *not* a "tangible employment action" and that an employer *can* raise an affirmative defense in these cases, even when the alleged harasser(s) were the plaintiff's supervisor(s). This ruling reiterates the importance of implementing an effective procedure for reporting complaints of illegal harassment and the importance of ensuring that supervisors are aware of and abide by the employer's policy prohibiting illegal harassment.