



WOMEN IN FILM & VIDEO OF WASHINGTON, DC

Assessing Hostile Work Environments

In the wake of recent high-profile sexual harassment claims, many employees (and employers) are asking: what constitutes a “hostile work environment”? Women in Film & Video of Washington, DC (WIFV) endeavors to provide our members with information and resources about legal issues of interest and import. Below is some basic information regarding the law on employment discrimination and hostile work environments.

You may also want to review our prior postings on [sexual harassment](#) and [age discrimination in hiring](#), which contain links to federal, state, and local resources to help you understand and enforce your rights.

On the federal level, [Title VII of the Civil Rights Act of 1964](#) prohibits employment discrimination against employees and applicants based on “protected classes,” including race, color, religion, sex, or national origin.

Title VII prohibits, among other things, “hostile work environments,” which are marked by unwelcome comments or conduct so severe or pervasive as to unreasonably interfere with work performance or create an intimidating, abusive, hostile or offensive work environment. To be actionable, the harassment must be based on the employee’s membership in one of the protected classes listed above.

Title VII applies to private, state and local government employers with 15 or more employees, and federal government employees and applicants for federal employment. The Equal Employment Opportunity Commission (EEOC) enforces federal laws, such as Title VII, that prohibit employment discrimination based on membership in certain [protected classes](#). The EEOC’s website contains information on [what to do if you believe you have been harassed at work](#) as well as [resources for small business owners](#) who want to understand which federal laws apply to them, how to prevent discrimination, and how to respond to a charge of discrimination.

Determining whether a hostile work environment exists is a fact-intensive inquiry. Courts look at “the totality of the circumstances,” such as the frequency of the discriminatory conduct, its severity, its offensiveness, and whether it interferes with an employee's work performance. An employee alleging a hostile work environment must demonstrate either a single incident that was

extraordinarily severe, or a series of incidents that were sufficiently continuous and concerted to have altered the conditions of his or her working environment.

In assessing whether a hostile work environment exists, courts will apply both subjective and objective tests: the victim must *subjectively* perceive the environment to be abusive and the conduct must be severe or pervasive enough to create an *objectively* hostile or abusive work environment.

Notably, an employee may have a claim for harassment even if the harasser is not his or her direct supervisor; the harasser may also be a supervisor in another area, one of the employer's agents, a co-worker, or even a non-employee, such as a contractor or vendor. In addition, the harassment victim need not be the person who is directly harassed, but may sometimes also be someone affected by the offensive conduct.

It is important to understand Title VII is *not* a “civility code” for the workplace. Simple teasing, offhand comments, personality conflicts, and isolated incidents of rude treatment (unless extremely serious) are unlikely to rise to the level of a hostile work environment. Rather, conduct must be severe or pervasive enough to change the terms and conditions of employment.

Moreover, employees may jeopardize their legal claim if they unreasonably fail to take advantage of efforts by their employer to prevent or cure a hostile work environment. [As the EEOC explains](#): “If the supervisor’s harassment results in a hostile work environment, the employer can avoid liability only if it can prove that: 1) it reasonably tried to prevent and promptly correct the harassing behavior; and 2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.” Thus, the EEOC encourages employees to inform the harasser directly that the conduct is unwelcome and must stop, and also to report harassment to management at an early stage to prevent its escalation.

Some employees feel hesitant to report harassing behavior because they fear retaliation by their employers or supervisors. It is critical for employees to understand that such retaliation is itself illegal. Discrimination laws routinely make it unlawful for employers to take “adverse employment actions” against an employee because the employee engaged in “protected activity” – such as opposing unlawful employment practices or participating in the investigation or proceedings regarding such conduct.

The EEOC offers exhaustive details on enforcing [retaliation](#) laws.

In addition to federal law, state and local laws provide further (and sometimes greater) protection for individuals who have experienced employment discrimination. Detailed information on the DC, Virginia, and Maryland employment discrimination laws and resources is available in WIFV’s prior postings on [sexual harassment](#) and [age discrimination in hiring](#).