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## **EVIDENCE**

# **How much is enough to create a hostile work environment?**

by Adria B. Martinelli and Michael P. Stafford

*Nearly every employee in today's workplace has heard the term "hostile work environment," and many throw the term about loosely when suffering any perceived indignities. But "hostile work environment" has a very specific meaning under the law, and not every workplace slight equates to one. Under the law, the harassment or discrimination must be "severe or pervasive." A recent decision from the U.S. District Court for the District of Delaware contains some helpful discussion regarding how much is enough to be "severe or pervasive."*

### ***Facts***

Lorraine Duffy began working for the Delaware Department of State as a computer programmer on February 25, 2002. Among her coworkers were two males, Phil Fred and Edward Griffin. Her direct supervisor was Dan Carroll, who reported to James Ravis.

After a period of sick leave in 2002, Duffy began encountering a series of problems working with Fred. In her view, he "was very short with, and critical of, any and all of [her] work," "frequently used profanity (the 'f' word) and obscene gestures," and was "uncooperative and evasive about work issues." She claimed he kicked the back of her chair on one occasion, abruptly walked away during conversations, and frequently interrupted her when she was speaking. In January 2003, she and Fred met in Ravis' office to discuss his behavior.

Duffy also complained that by 2003, her working relationship with Carroll had become "strained." She claimed that she was "uncomfortable and fearful" working with him after an incident in which he "loudly berated" her.

In 2005, Carroll became enraged at Duffy for running a test on a program. He pounded on his desk and rose to his feet. Duffy was frightened and told him he needed to do something about his anger. Another incident occurred a few months later in April when Carroll "yelled at [Duffy] and said he was going to slap her." Soon after, she was assigned to different work projects.

Duffy eventually filed a lawsuit alleging a hostile work environment based on her gender and retaliation in violation of Title VII of the Civil Rights Act of 1964.

### ***Court's decision***

The court agreed with the employer's argument that Duffy's hostile work environment claim lacked merit and dismissed the claim. The retaliation claim, however, proceeded to trial.

For Duffy to have a viable hostile work environment claim, she had to show the following:

1. she suffered intentional discrimination because of a protected class, such as gender;
2. the discrimination was severe or pervasive;
3. the discrimination detrimentally affected her;
4. the discrimination would have detrimentally affected a reasonable person of the same gender in the same position; and
5. the employer was (or should have been) aware of the harassment.

Duffy produced no evidence of gender discrimination beyond her own conclusory allegations and "uncorroborated generalities." Moreover, neither Carroll nor Fred's remarks, on their face, indicated any gender-based animus.

The court also went on to note that the alleged harassment was not "pervasive," stating that Duffy described various discrete incidents scattered over two years' time, and the incidents were not in any way connected to one another. *Duffy v. Dep't of State*, No. 06-460-SLR (D. Del., Feb. 25, 2009).

### ***Bottom line***

It's not unusual for employees to attempt to link together a series of workplace events in hindsight and label it a "hostile work environment." However, Title VII isn't designed to remedy all workplace indignities. Although certainly managers should be trained to treat employees with respect and try to avoid claims to begin with, not every rude or

inappropriate remark constitutes a hostile work environment.

Even when the employee can point to several comments or events, it won't always be sufficient. If the events are spread over a substantial period of time and on their face don't evidence animus based on a protected class, it is unlikely a court will find that a hostile work environment existed.

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