Constitutional Law - Civil Rights Act - Title VII - Sex Discrimination - Hostile Work Environment Sexual Harassment

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CONSTITUTIONAL LAW—CIVIL RIGHTS ACT—TITLE VII—SEX DISCRIMINATION—HOSTILE WORK ENVIRONMENT SEXUAL HARASSMENT—The United States Supreme Court held that an employer's conduct need not seriously affect an employee's psychological well-being or cause the employee to suffer tangible injury to be actionable as hostile work environment harassment in violation of Title VII of the Civil Rights Act of 1964.


Teresa Harris began work at Forklift Systems, Inc. ("Forklift"), an equipment rental company, in April of 1985. She worked as a manager in the leased equipment department and as a coordinator in the sales department during her period of employment. The president of the company, Charles Hardy, was Harris' immediate supervisor. During Harris' two and one-half years of employment with Forklift, Hardy repeatedly made derogatory comments to Harris regarding her gender. Additionally, he directed many sexual innuendos toward her. A number of these remarks were made in front of other employees. In August of 1987, Harris spoke with Hardy about his discriminatory treatment of her. Hardy responded by stating that he was surprised that Harris had been offended by his remarks, stated that he had only been joking, and apologized. Furthermore, Hardy promised to stop the offensive behavior. Several weeks

2. Brief for Petitioner at 3, Harris v. Forklift Systems, Inc., 114 S. Ct. 367 (1993) (No. 92-1168). Forklift employed a total of six managers: four males, Harris, and another female who was the daughter of Forklift's president. Petitioner's Brief at 3.
3. Petitioner's Brief at 3.
4. Harris, 114 S. Ct. at 369. For example, Hardy had stated to Harris on several occasions, "you're a woman, what do you know?" Id.
5. Id. Once he suggested that Harris go to a hotel with him to negotiate her raise. Id. Hardy also occasionally asked Harris and other female employees to retrieve coins from the front pocket of his pants. Id.
6. Id.
7. Id.
8. Id.
9. Harris, 114 S. Ct. at 369.
later, Hardy asked Harris if she had promised to have sex with one of Forklift's customers in exchange for the customer making a business deal with Forklift.\(^\text{10}\) Shortly thereafter, Harris quit her job.\(^\text{11}\)

Consequently, Harris commenced a Title VII action against Forklift, claiming that Hardy's behavior had created an abusive work environment.\(^\text{12}\) The United States District Court for the Middle District of Tennessee adopted the recommendation of a magistrate and held that Hardy's conduct had not created an abusive work environment.\(^\text{13}\) The court found that although Harris had been offended by some of Hardy's comments, as a reasonable woman would have been, she had not suffered serious damage to her psychological well-being.\(^\text{14}\) Harris appealed to the United States Court of Appeals for the Sixth Circuit.\(^\text{15}\) The circuit court affirmed the judgment of the district court in an unpublished opinion.\(^\text{16}\) Ultimately, Harris appealed this decision to the United States Supreme Court.\(^\text{17}\) The Court granted certiorari\(^\text{18}\) to resolve whether an employer's conduct must seriously affect an employee's psychological well-being or cause the employee to suffer tangible injury in order to be actionable as abusive work environment harassment under Title VII.\(^\text{19}\)

Justice O'Connor, writing for a unanimous Court, began the opinion by noting that Title VII of the Civil Rights Act of 1964 prohibited employers from discriminating against employees because of their gender.\(^\text{20}\) In the past, the Court had interpreted

\(^{10.}\) *Id.*

\(^{11.}\) *Id.*


\(^{13.}\) *Harris*, 114 S. Ct. at 369.


\(^{15.}\) *Harris*, 114 S. Ct. at 370.


\(^{17.}\) *Harris*, 114 S. Ct. at 370.


\(^{19.}\) *Harris*, 114 S. Ct. at 370.

\(^{20.}\) *Id.* The Civil Rights Act of 1964 (the "Act") makes it "an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of
this statute to prohibit employers from requiring employees to work in a discriminatorily abusive environment. The Court reaffirmed that an employer violated Title VII when it created an abusive working environment for an employee through discrimination. The Court also reasserted that in order for an employer to be in violation of Title VII, its conduct must have been more than merely offensive to the employee.

The Court then held that an abusive work environment did not necessarily have to cause a tangible injury to the plaintiff. The Court noted that Title VII protected an employee before his employer's harassing conduct caused the employee to suffer a nervous breakdown. An employee's work performance, length of employment, and career advancement, the Court reasoned, could be affected by a discriminatorily abusive work environment even if the employee's psychological well-being was not seriously affected. The Court also noted that for a particular work environment to be considered abusive, both a reasonable, objective person and the affected employee must find that the employer's behavior altered the employee's working conditions. Accordingly, the Supreme Court concluded that the district court had erred in ruling that Harris' work environment was not abusive because Hardy's conduct had not seriously affected her psychological well-being or caused her to suffer tangible injury. The judgment of the court of appeals was reversed


21. Harris, 114 S. Ct. at 370 (citing Meritor Savings Bank v. Vinson, 477 U.S. 57, 64 (1986)). Meritor involved a sexual harassment claim by a female bank employee against her employer and her male supervisor. Meritor, 477 U.S. at 60. In that case, the Court defined an abusive work environment as one in which enough discriminatory insult and ridicule is present to alter the employee's working conditions. Id. at 67. Furthermore, the Court held that Title VII violations could occur absent economic or tangible discrimination. Id. at 64. The Court noted that Title VII's prohibition against discrimination with respect to one's "terms, conditions, or privileges of employment" evinces a congressional intent to 'strike at the entire spectrum of disparate treatment of men and women.' " Id. (quoting Sprogis v. United Air Lines, Inc., 444 F.2d 1194, 1198 (7th Cir.), cert. denied, 404 U.S. 991 (1971)). See notes 63-74 and accompanying text for further discussion of Meritor.

22. Harris, 114 S. Ct. at 370.

23. Id.

24. Id.

25. Id.

26. Id. at 371.

27. Harris, 114 S. Ct. at 370. The Court noted that if the employer's conduct was not objectively abusive or if the employee did not consider the conduct to be abusive, the conduct was beyond the scope of Title VII. Id.

28. Id. at 371. To be actionable under Title VII, a work environment need not cause an employee to suffer psychological injury as long as the employee and an objective person would perceive it to be abusive. Id. at 370.
by the Supreme Court and the case was remanded.\textsuperscript{29}

In a concurring opinion, Justice Scalia asserted that the Court had not set forth a clear standard for determining whether a work environment was abusive.\textsuperscript{30} He noted that although the Court could formulate an absolute standard, it would be contrary to the statute because the statute did not permit limiting the methods for determining abusiveness.\textsuperscript{31} He stated that he knew of no standard "more faithful to the inherently vague statutory language" than that which the Court adopted, and thus, joined the majority opinion.\textsuperscript{32}

In a separate concurrence, Justice Ginsburg stated that in determining whether a work environment was abusive, courts should focus on whether the employer's conduct unreasonably interfered with the employee's work performance.\textsuperscript{33} In her opinion, an actual decrease in productivity should not be required; rather, courts should focus on whether the harassment made the job more difficult to perform.\textsuperscript{34}

Eradicating discrimination in the workplace is a relatively new concept in American jurisprudence. Congress drafted Title VII of the Civil Rights Act of 1964\textsuperscript{35} (the "Act") with the intent of eliminating employment discrimination that was based on race, color, religion, or national origin.\textsuperscript{36} Interestingly, sex was not originally included as one of the bases on which discrimination would no longer be permitted.\textsuperscript{37} A few months before the passage of Title VII, a House member offered an amendment to the Act that would also make it unlawful for employers to discriminate against employees based on their sex.\textsuperscript{38} That amend-

\textsuperscript{29} \textit{Id.} at 371.
\textsuperscript{30} \textit{Id.} at 372 (Scalia, J., concurring). He asserted that the Court's requirement that a reasonable, objective person consider the environment abusive, did not define a standard that juries could use in determining whether the employer's conduct warranted an award of damages. \textit{Id.}
\textsuperscript{31} \textit{Id.}
\textsuperscript{32} \textit{Id.}, 114 S. Ct. at 372 (Scalia, J., concurring).
\textsuperscript{33} \textit{Id.} (Ginsburg, J., concurring).
\textsuperscript{34} \textit{Id.} This determination could be made by concluding that a reasonable person would have found the job more difficult due to the altered working conditions that resulted from the harassment. \textit{Id.}
\textsuperscript{35} See note 20 for the relevant portion of the Act.
\textsuperscript{36} \textsc{House Judiciary Committee, H.R. Rep. No. 914, 88th Cong., 2d Sess. (1964), reprinted in 1964 U.S.C.C.A.N. 2391, 2401 (1964). Title VII established the federal Equal Employment Opportunity Commission ("EEOC") and delegated to that agency the primary responsibility to enforce the Act and eliminate employment discrimination from the workplace. \textit{Id.}
\textsuperscript{37} 1964 U.S.C.C.A.N. at 2401.
\textsuperscript{38} 110 \textsc{Cong. Rec.} 2577 (1964). Representative Smith proposed the amendment "to prevent discrimination against another minority group, the women." \textit{Id.} He read a letter from a woman who presented figures from the 1960 census that
ment was passed by a vote of fifty-six percent of the House.39

Since Title VII's inception, courts have adjudicated many cases that have required interpretation of various sections of the Act. In 1971, the United States Court of Appeals for the Fifth Circuit recognized that an employee had a right to have his psychological well-being protected from employer abuse in Rogers v. Equal Employment Opportunity Commission.40 Rogers was the first case to recognize a cause of action based upon a discriminatory work environment.41 In Rogers, the court was confronted with a Hispanic employee's claim that her employers, who were optometrists, fired her because of her national origin.42 She also claimed that her employers segregated their minority patients.43 The court considered whether the segregation of the patients was offensive enough to the employee to have changed her working environment.44 The court reasoned that Title VII's broad purpose of eliminating the inconvenience, unfairness, and humiliation of discrimination dictated that an employee's psychological, as well as economic, well-being should be protected.45 It held that the segregation of the patients, which was discriminatory, could have created a working environment that was discriminatory toward the minority employee.46 The court concluded that a working environment that was heavily charged with racial or ethnic discrimination was actionable under Title VII.47

In 1981, the United States Court of Appeals for the District of Columbia in Bundy v. Jackson,48 expanded the definition of a

showed that women were actually a majority group. Id. Furthermore, he stated that "women have some real grievances and some real rights to be protected." Id. The principal argument against the amendment was set forth by Representative Celler who read from a letter written by the United States Department of Labor, which contended that sex discrimination was sufficiently different from the other types of discrimination already included in the Act to warrant separate legislative treatment. Id. The House members continued to debate until a vote was ordered. Id. at 2584.

39. 110 CONG. REC. at 2584.
40. 454 F.2d 234 (5th Cir. 1971), cert. denied, 406 U.S. 957 (1972).
41. Meritor, 477 U.S. at 65.
42. Rogers, 454 F.2d at 236. The employee's charge stated that her employers had terminated her not because of her work, but because of friction between her and her Caucasian coworkers. Id.
43. Id. The court did not know what the employee meant by this charge, so the majority of the court interpreted it to mean that the optometrists provided different treatment to their patients depending on the patients' ethnic origins. Id. at 237.
44. Id. at 237-38.
45. Id. at 238.
46. Id. at 239.
47. Rogers, 454 F.2d at 238.
discriminatory work environment to include one in which an employee was discriminated against because of her sex. 

Bundy was the first decision to resolve in the affirmative the issue of whether Title VII could be violated where an employer created a discriminatory work environment, yet the employee did not lose any tangible job benefits as a result of the discrimination. In Bundy, a female corrections officer was regularly propositioned by some of her male supervisors. The employee claimed that her employer illegally delayed her promotion because she rejected her supervisors’ advances and subsequently filed a discrimination complaint with the corrections agency. The court stated that prior Title VII cases, which recognized that discriminatory work environments were actionable, dictated that work environments that were filled with sexual harassment should also be actionable. The court emphasized that the sexual harassment need not result in a loss of tangible benefits to the employee in order to be actionable. In Bundy, the court determined that because the employee was subjected to demeaning propositions and insults, her resultant anxiety and debilitation established a Title VII violation.

49. Bundy, 641 F.2d at 943-44.
50. Id. at 940. The district court found that in the corrections agency, “the making of improper sexual advances to female employees [was] standard operating procedure, a fact of life, a normal condition of employment.” Id. at 939. At one point, the female employee complained to a male supervisor about her immediate supervisor’s propositions. Id. at 940. He replied that “any man in his right mind would want to rape you.” Id.
51. Id. at 939.
52. Id. at 943-45. These prior Title VII cases concerned discrimination based on race, religion, national origin, and sexual stereotyping. Id.

The court further supported its decision by looking at guidelines that the EEOC had issued in 1980 that included sexual harassment as a form of sex discrimination prohibited by Title VII. Id. at 947. These guidelines provide:

(a) . . . Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

Id. (quoting 29 C.F.R. §1604.11(a) (1980)).

Generally speaking, there are two types of sexual harassment. See Meritor Savings Bank v. Vinson, 477 U.S. 57, 65 (1986). The first type is quid pro quo harassment. 29 C.F.R. § 1604.11(a) (1993). This type of harassment is directly linked to the grant or denial of an employee’s economic benefits. Meritor, 477 U.S. at 65. The second type is hostile environment harassment. 29 C.F.R. § 1604.11(a)(3). Hostile environment harassment is the focus of this note.
53. Bundy, 641 F.2d at 948.
54. Id. at 944.
Although the United States Supreme Court had yet to rule on whether a hostile work environment caused by sexual harassment was actionable as a form of sex discrimination under Title VII, circuit courts were deciding the issue in the affirmative. In *Henson v. City of Dundee*, the Eleventh Circuit drew support from both *Rogers* and *Bundy* in deciding whether an employer's creation of a hostile work environment due to sexual harassment was a violation of Title VII. In *Henson*, the court was faced with a female police dispatcher's claim that the chief of the city police department sexually harassed her to the point where she was forced to resign from her job. The court noted that the *Rogers* rationale allowed courts to interpret a discriminatory work environment to include one in which an employee was discriminated against because of her sex. The court also noted that an employer could violate Title VII by creating a hostile work environment regardless of whether an employee suffered economic loss. The Eleventh Circuit ultimately concluded that the dispatcher had established a prima facie case of a Title VII violation.

In 1986, the United States Supreme Court finally ruled on the issue of whether a hostile work environment created by sexual harassment was actionable as a form of sex discrimination under Title VII in *Meritor Savings Bank v. Vinson*. In *Meritor*, a

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55. *Meritor*, 477 U.S. at 66.
56. 682 F.2d 897 (11th Cir. 1982).
57. *Henson*, 682 F.2d at 902-04.
58. *Id.* at 899. The dispatcher claimed that the male chief used vulgar language, regularly inquired about her sexual habits, and repeatedly asked her to have sexual relations with him. *Id.*
59. *Id.* at 901-02. The court stated:
Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets. *Id.* at 902.
60. *Id.* at 901. The court noted that the EEOC guidelines were “useful and informative” to its decision. *Id.* at 903.
61. *Prima facie* comes from the Latin for “at first sight.” BLACK’S LAW DICTIONARY 1189 (6th ed. 1990). A litigating party is said to have a *prima facie* case when the evidence in his favor is such that it “will prevail until contradicted and overcome by other evidence.” *Id.*
62. *Henson*, 682 F.2d at 905. The court concluded that the dispatcher was entitled to try to prove only her claim of hostile work environment harassment on remand to the district court. *Id.* at 908. The court deferred to the district court's determination that the dispatcher had not suffered *quid pro quo* harassment. *Id.* at 907-08.
female bank employee brought an action against her male supervisor for sexual harassment in violation of Title VII. The employee claimed that once she had received her first promotion, her supervisor began making sexual advances toward her. The employee contended that she did not welcome the advances and acquiesced because she was afraid of losing her job.

In *Meritor*, the Supreme Court began by noting that discrimination did not have to be economic or tangible in order to be actionable. It noted that the language of Title VII prohibited all types of discrimination. The Court then examined the guidelines issued by the Equal Employment Opportunity Commission ("EEOC") which provided that sexual harassment was prohibited where it unreasonably interfered with an employee's work performance or created an intimidating, hostile, or offensive work environment. The Court agreed with the EEOC's guidelines that an employee did have an actionable claim under Title VII if the employer's sexual discrimination created a hostile or abusive work environment for that employee. Furthermore, the Court held that in order to be abusive, a work environment must change an employee's working conditions.

The *Meritor* Court then ruled that the lower court had erred in focusing on the bank employee's consensual engagement in sexual intercourse with her supervisor. The opinion stated

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64. *Meritor*, 477 U.S. at 60. The employee had worked at the bank for four years and had advanced from a position as a teller-trainee to an assistant branch manager. *Id.* It was undisputed at the district court bench trial that the employee's promotions had been based on merit alone. *Id.*

65. *Id.* Up until that point, he had treated her in a "fatherly way." *Id.* Shortly after she had received her promotion, he invited her to dinner. *Id.* At dinner, he suggested that they go to a motel and have sexual relations. *Id.* At first she refused, but she eventually agreed for fear of losing her job. *Id.* Thereafter, she had sexual intercourse with him several times during the course of her employment. *Id.*

66. *Id.* The employee claimed that her supervisor demanded sexual favors during and after business hours. *Id.* Some of the demands were made in front of other employees. *Id.*

67. *Id.* at 64.

68. *Id.*

69. *Meritor*, 477 U.S. at 65-66. See note 52 for the EEOC guidelines. The Court recognized that while interpretations of administrative agencies did not control the courts, they provided experienced and informed guidance. *Id.* at 65 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Justice Marshall noted in a concurring opinion that the guidelines were "entitled to great deference." *Meritor*, 477 U.S. at 74 (Marshall, J., concurring). The Court went on to note that the EEOC guidelines supported the Court's view that discrimination need not be economic in order to violate Title VII. *Meritor*, 477 U.S. at 65.

70. *Id.* at 66.

71. *Id.* at 67. Prior to this decision, the Court had not enunciated a standard for determining whether an employee's working conditions had been sufficiently altered to constitute a violation of Title VII. *Id.*

72. *Id.* at 68. The Court stated that the fact that the employee's conduct was
that when courts decided sexual harassment cases, the main focus was whether the employee's conduct indicated that the employer's actions were unwelcome, not whether the employee's actual conduct was voluntary.\textsuperscript{73}

With \textit{Meritor}, the Supreme Court established that a hostile work environment due to sexual harassment was actionable under Title VII even though an employee had suffered no economic or tangible harm.\textsuperscript{74} In the cases that arose after \textit{Meritor}, the circuit courts adjudicated more narrow issues. In \textit{Rabidue v. Osceola Refining Company},\textsuperscript{75} the Sixth Circuit adjudicated the issue of whether an employer's sexually harassing conduct must seriously affect the psychological well-being of an employee to be actionable under Title VII.\textsuperscript{76} In \textit{Rabidue}, a female employee was discharged because of many work-related problems.\textsuperscript{77} She subsequently brought an action against her employer claiming Title VII violations.\textsuperscript{78} The district court found for the employer.\textsuperscript{79} The circuit court reviewed the factual findings of the district court and ultimately affirmed the judgment.\textsuperscript{80} In affirming that judgment, the circuit court set forth various requirements that must be met for employees to succeed in an action for a Title VII violation.\textsuperscript{81} One of those requirements was that the voluntary was not a defense in a sexual harassment suit brought under Title VII. \textit{Id.}

\textsuperscript{73} \textit{Id.} The Court opined that problems of proof arose when the focus was shifted to the employee's reception of the employer's actions. \textit{Id.} The trier of fact must largely base its determination of whether the actions were unwelcome on the credibility of the parties. \textit{Id.} The Court also decided that the district court had not erred in admitting evidence of the bank employee's "dress and personal fantasies." \textit{Id.} It stated that the evidence was obviously relevant to whether the employee welcomed her supervisor's advances. \textit{Id.} at 69. The district court had the discretion to determine whether the probative value of such evidence was outweighed by its prejudicial value. \textit{Id.}

\textsuperscript{74} \textit{Meritor}, 477 U.S. at 64.

\textsuperscript{75} 805 F.2d 611 (6th Cir. 1986), cert. denied, 481 U.S. 1041 (1987).

\textsuperscript{76} \textit{Rabidue}, 805 F.2d at 620.

\textsuperscript{77} \textit{Id.} at 615. Her employer stated that the reasons for her discharge were her opinionated personality and her inability to work with others. \textit{Id.}

\textsuperscript{78} \textit{Id.} The employee contended that she was the subject of both sexual harassment and sexual discrimination. \textit{Id.} at 614. She claimed that she had been sexually harassed by a fellow employee who was extremely vulgar. \textit{Id.} at 615. Management was aware of this male employee's obscene behavior, but had not been able to curb it. \textit{Id.} The female employee also was subjected to pictures of scantily clad women that her male coworkers displayed in their work areas. \textit{Id.}

\textsuperscript{79} \textit{Id.} at 614.

\textsuperscript{80} \textit{Id.} at 618. The circuit court recognized the wide disparity between the employee's testimony and that of her employer and deferred to the district court's determinations of credibility. \textit{Id.} at 618 n.3.

\textsuperscript{81} \textit{Rabidue}, 805 F.2d at 619-20. The court set forth the requirements because, prior to \textit{Rabidue}, it had not addressed a claim of a Title VII violation based upon a sexually discriminatory work environment that had not resulted in a tangible job
employer’s sexual harassment must seriously affect the psychological well-being of the employee. The court also required that the employer’s conduct must be offensive to both the affected employee and a reasonable person.

In Ellison v. Brady, a case decided by the Ninth Circuit more than four years after the Sixth Circuit decided Rabidue, the court reached a different conclusion regarding whether an employee must suffer psychological injury to maintain an actionable claim under Title VII. Ellison involved a female employee’s claim of sexual harassment by a male coworker. The circuit court opined that the male coworker’s conduct did not rise to the level of forcible rape, but did involve more than the utterance of an epithet. Therefore, earlier cases did not dictate the result in this case, but only provided guidance to the court. The court ultimately concluded that the female employee had an actionable claim under Title VII. Furthermore, the court asserted that employees need not have their psychological well-being affected to the point where they suffer anxiety and debilitation. The court also noted that Title VII began to protect employees long before they required psychiatric help for enduring sexual harassment.

At this time, it seems firmly established that an employee

detriment. Id. at 619. In drafting the requirements, the court considered the EEOC guidelines and legal precedent. Id.
82. Id. at 619-20. In the Rabidue case, the district court found that the work environment, while annoying, did not seriously affect the psychological well-being of the female employee. Id. at 622.
83. Id. at 620.
84. 924 F.2d 872 (9th Cir. 1991).
85. Ellison, 924 F.2d at 877-78.
86. Id. at 873-74. The male coworker worked in the same office as the female employee and became increasingly preoccupied with the employee. Id. He wrote her letters and pestered her when she was at work. Id.
87. Id. at 877. The court was referring to earlier cases that defined sexual harassment. See Meritor, 477 U.S. at 67; Rogers, 454 F.2d at 238.
88. Ellison, 924 F.2d at 877. The court acknowledged the Sixth Circuit’s decision in Rabidue and openly rejected it. Id. The court stated that Rabidue’s requirement that an employee’s psychological well-being must be seriously affected for that employee to have an actionable claim was not consistent with the language in Meritor. Id. at 877-78.
89. Id. at 878. The court held that a female employee established a prima facie case of hostile environment sexual harassment when she alleged that her employer acted in such a manner that a reasonable woman would consider the employer’s behavior to be sufficiently severe or pervasive to alter her conditions of employment and to create an abusive working environment. Id. at 879. The court emphasized that it was the employer’s “conduct which must be pervasive or severe, not the alteration in the conditions of employment.” Id. at 878.
90. Id.
91. Id.
may successfully bring an action against his employer under Title VII if that employer created a hostile or abusive work environment for that employee because of sexual harassment. Both times that this issue has come before the Supreme Court, in *Meritor* and *Harris*, the Court has affirmed the allowance of such an action. It also seems quite clear that an employee does not need to suffer tangible injury or have his psychological well-being seriously affected because of his employer's sexual harassment. *Harris* resolved this issue which arose among the circuit courts after *Meritor*.

What does not seem very clear is how courts should determine whether a particular work environment is hostile. The Court stated in *Meritor* that Title VII was violated when a workplace is permeated with "discriminatory intimidation, ridicule, and insult." It stated that discriminatory conduct must be severe or pervasive enough to alter the employee's working conditions. That standard was reaffirmed by the Court in *Harris*. In *Harris*, the Court determined that for conduct to be actionable, it must do more than merely offend an employee, yet it need not cause the employee to suffer tangible psychological injury. The Court did not determine at what point in this gamut conduct does become actionable. Justice Scalia was correct when he noted in *Harris* that the Court had not established a clear standard.

Without clear guidelines that define a hostile work environment, courts and juries will have to rely on their own sense of when an employer has crossed over the line to sexual harassment. This could lead to wide-scale inconsistencies in verdicts and damages. On the other hand, it could also lead to results that are quite fitting to each particularized situation. Sexual harassment claims are quite individualized and the juries and courts will be free to use their own judgment in determining if what occurred was actually sexual harassment.

The Court has liberally interpreted Title VII and given much

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92. The words "hostile" and "abusive" are used interchangeably in this note. The EEOC guidelines refer to an "intimidating, hostile, or offensive working environment." 29 C.F.R. §1604.11(a)(3) (1993). The Supreme Court used the word "abusive" in *Meritor* and used it again, extensively, in *Harris*. In fact, Justice Scalia noted in *Harris* that he took "abusive" and "hostile" to mean the same thing in the context of that case. *Harris*, 114 S. Ct. at 372 (Scalia, J., concurring).


94. Id. at 67.

95. *Harris*, 114 S. Ct. at 370. The Court admitted that it was taking a "middle path" but did not further define this "middle path" approach. Id. at 370-71.

96. Id. at 372 (Scalia, J., concurring).
credence to the EEOC guidelines. The Court's reasons justify this interpretation. Consequently, sexual harassment has become a hot topic in corporate America. Fortunately, both employers and employees are becoming more aware of the new rules that are developing with regard to workplace relationships.

In many instances, it seems that employers are overreacting to these new standards. At the least, many employers are concerned that they may be charged with sexual harassment if an employee takes offense at the employer's unintentional conduct. It is clear from the current law that if an employer makes an offensive remark once to an employee and the remark does not change the employee's working conditions, the employee does not have an actionable claim. However, the law does allow an employee redress in situations where the employer's harassment has changed the employee's working conditions.

The increased awareness of sexual harassment and the ensuing caution that have resulted from *Meritor* and *Harris* may outweigh the concerns that burden employers. The new policies that many employers will probably choose to adopt in the future regarding sexual harassment may inconvenience some of the employers, but the employees, and thus, the entire company, will undoubtedly be benefitted by a less threatening and more enjoyable work environment.

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