Harassed employees may be in 'hostile work environment'

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WHAT IT IS: Although "hostile work environment" was defined by the **U.S. Supreme Court** in a 1993 sexual harassment case, the claim can be made in nonsexual harassment EEO complaints as well.

A hostile work environment is a work environment made intolerable to a reasonable person by the frequency, severity or pervasiveness of objectionable words, actions or other materials of a sexual nature, or materials that direct hostility at people because of their ethnicity, race or age. In other words, employees who experience sexual or nonsexual harassment can claim the discrimination created a hostile work environment.

'Severe or pervasive'
While the courts and the **Equal Employment Opportunity Commission** may accept hostile work environment claims in cases involving most types of discriminatory harassment, hostile work environment was established by the Supreme Court in the sexual harassment case *Harris v. Forklift Systems, Inc.* (U.S. 1993).
In *Harris*, the Court found that Title VII of the **Civil Rights Act** is violated when the discriminatory conduct is so "severe or pervasive" as to create a discriminatory hostile or abusive work environment.
In determining whether a complainant has been subject to a hostile work environment, the EEOC will consider:

- The frequency of the alleged conduct.
- Its severity.
- Whether it is physically threatening or humiliating.
- If it unreasonably interferes with an employee's work performance.

In *Robert Brantley Jr. v. Henderson, Postmaster General, U.S. Postal Service,* (EEOC OFO 4/28/00), the EEOC found that the complainant stated a viable claim of discrimination based on his allegation that management's failure to take action in response to his repeated requests for assistance in dealing with confrontational coworkers created a hostile work environment due to his race, sex and disability.
Avoiding liability
Cases involving harassment and hostile work environment tend to involve supervisors and their employees, but it is the agency that is ultimately held liable. However, the Court has found that agencies can avoid liability in certain cases, even if the supervisor did create a hostile work environment. In a pair of 1998 cases, *Burlington Industries, Inc. v. Ellerth*, (1998), and *Faragher v. City of Boca Raton*, (1998), the Court determined that an agency can avoid liability for hostile work environment harassment if it can show:

- It exercised reasonable care to prevent and promptly correct any harassing behavior.
- The victim unreasonably failed to take advantage of any preventative or corrective opportunities provided by the agency or to avoid the harm otherwise.

In addition, an agency can improve its chances of avoiding liability if it can prove it had a stated anti-harassment policy with an effective complaint process.