

## **The Connection Between A Hostile Work Environment and Discrimination**

**QUESTION:** I am one of two managers, and we jointly supervise 25 employees. All of our employees have complained to me about the company's other manager. In fact, several employees have described our work environment as "toxic," and blame the problems entirely on him. Many of the employees who complain to me about him specifically use the phrase "hostile environment" to describe the work atmosphere.

You see, the other manager's management style could only be described as abrasive, aggressive, and sometimes downright rude. He does not hesitate to criticize employees in front of their coworkers, and often yells and threatens employees with discipline when he thinks they are not performing up to par. I have personally observed him stomping around while yelling at an employee, and I've also overheard him berating an employee in front of co-workers until she started to cry.

I've mentioned the issue to my manager several times, but I seem to be the only one interested in changing his offensive and inappropriate behavior. The manager in question treats me with respect, but I am afraid that if he keeps up the antagonistic behavior toward other employees we may soon have a hostile environment claim (or a number of them) on our hands. Is his behavior exposing the company to a potential hostile environment complaint?

**ANSWER:** State and federal law prohibit employment discrimination on the basis of any protected class status. Some examples of protected classes include race, color, national origin, sex, age, religion and disability. Discrimination based on any of the protected classes is prohibited in hiring, compensation, termination, and all other terms or conditions of employment.

A "hostile environment" is a work atmosphere contaminated by a pattern of offensive conduct directed at an individual's protected class status. The law further describes the elements of a hostile environment as conduct of a verbal or physical nature that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile, or offensive working environment. Oregon Administrative Rule 839-005-0010 applies to harassment in the workplace based upon protected classes such as race, religion, use of the workers' compensation system, age, etc. Administrative rule 839-005-0030 pertains only to a hostile environment in the context of sex harassment.

The manager's behavior does not sound like the kind of harassment that constitutes a hostile environment, because it is missing a key element: a connection to protected class status. While his behavior may be aggressive and demeaning to the extent that it would

meet the other elements of the definition of a hostile environment, his conduct is not directed at employees based on protected class status. For example, he does not pick on women but not men.

Of course, this doesn't mean that his boorish behavior should simply be ignored. Given the number of complaints you are fielding about him, he obviously needs to be reigned in. Although the type of harassing behavior he engages in is not likely to support a hostile environment harassment claim, his conduct, if sufficiently outrageous, may result in company liability (or in some cases, even personal liability for him) for other types of claims such as intentional infliction of emotional distress, assault or stress claims through workers' compensation.

Aside from liability issues, the practical impact of his behavior is that workplace morale is likely to be strained due to his harsh management style. The company would be smart to work on improving his behavior in order to eliminate the climate of fear and intimidation from the work environment.

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