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Legal Remedies for Workplace Bullying: Grabbing the Bully by the Horns

C.W. Von Bergen, Joseph A. Zavaletta, Jr., and Barlow Soper

Supervisor to Employee: “You see this watch? That watch costs more than your car. I made $970,000 last year, how much did you make? You see pal, that’s who I am, and you’re nothing. Nice guy? I don’t give a #$%&. Good father? #$%& you; go home and play with your kids. . . . You think this is abuse, you #$%&? You don’t like it? Leave!”


The movie excerpt quoted above clearly illustrates that the boss is a jerk. But, is the manager also a workplace bully? Based on the limited information presented in the scenario this question is more difficult to answer. To better understand such situations this article discusses workplace bullying. It starts by defining workplace bullying and positioning it on a hostile workplace continuum. Then, the prevalence of workplace bullying and its consequences are presented. Finally, possible legal remedies for individuals who perceive they are being bullied are considered.

INTRODUCTION

Bullying Defined Within a Hostile Workplace Continuum

Bullying lies on a continuum anchored by on-the-job incivilities on one end and physical violence on the other (see Figure 1). While incivilities may cause some discomfort and physical violence can result in death, bullying may result in mild to severe harm to an individual.

Figure 1. Continuum of a Hostile Work Environment Illustrating Varying Degrees of Abusive Behavior

←Milder More Severe→

<table>
<thead>
<tr>
<th>Incivility</th>
<th>Bullying</th>
<th>Physical Violence</th>
</tr>
</thead>
</table>

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At the extreme right end of the hostile work environment continuum lies physical assault, battery, homicide, and other extremely violent overt events detailed within the criminal codes in all industrialized countries. At the left end of this continuum is workplace incivility which often refers to relatively covert antisocial behaviors such as swearing, isolation, and interrupting. Incivility has been defined as “low-intensity deviant behavior with ambiguous intent to harm the target, in violation of workplace norms for mutual respect and may or may not be intended to harm the target.” Uncivil behaviors are characteristically rude and discourteous, displaying a lack of regard for others. Not surprisingly, rudeness may rise to the level of abuse and increased incivility as a precursor to more intense interpersonal mistreatment such as undermining, petty tyranny, emotional abuse, generalized workplace abuse, nonphysical work place aggression, victimization at work, and bullying. “Bullying is different from harmless incivility, rudeness, boorishness, teasing, and other well-known forms of interpersonal torment. It is mostly sub-lethal, non-physical violence.”

Workplace Bullying Defined

There is no single agreed-upon definition of bullying. Further complicating understanding, bullying goes by different names: interpersonal mistreatment, psychosocial harassment, psychological violence, abusive workplace conduct, antisocial employee behavior, escalated incivility, and psychological aggression, among others. Bullying is not about a “clash of personalities, a misunderstanding, or miscommunication.” Nor should it be confused with “joking” or “horseplay,” which are characterized by a lack of animosity.

Bullying generally involves one person harassing another and “is characterized by a pattern of deliberate, hurtful and menacing behaviors.” It can include intimidating physical threats such as pushing, shoving, and invading an individual’s personal space. Bullying typically represents psychological violence that is mostly covert. It is usually psychological violence, both in its nature and impact, involving an array of low-level aggressions often disguised as joking or initiation rites that disguise and mask sadistic behaviors. Keashly and Newman identified the following ten bullying behaviors:

1. Glaring in a hostile manner;
2. Treating in a rude/disrespectful manner;
3. Interfering with work activities;
4. Giving the “silent treatment”;
5. Giving little or no feedback on performance;
6. Not giving praise to which an individual feels entitled;

7. Failing to give information needed;

8. Delaying actions on matters of importance to an individual;

9. Lying; and

10. Preventing an individual from expressing oneself.

Common to most definitions of bullying, however, is behavior that intimidates, humiliates, and/or undermines a person and that is repeated over time. These descriptions encompass certain characteristics that should be included in any understanding of workplace bullying. Hence, we define workplace bullying as: harassment that inflicts a hostile work environment upon an employee by a coworker or coworkers, typically through a combination of repeated, inappropriate, and unwelcome verbal, nonverbal, and/or low-level physical behaviors that a reasonable person would find threatening, intimidating, harassing, humiliating, degrading, or offensive. Thus, by this definition the movie boss presented in the opening scenario would be considered a workplace bully by most individuals. The only aspect of the definition in doubt might be the "repeated" criterion. But, it would seem that the other aspects were so severe as to still qualify.

**Prevalence of Workplace Bullying**

Results from a European Union survey show that 9 percent of workers in Europe, or 12 million people, reported being subject to bullying over a 12-month period in 2000.¹⁷ Large-scale studies in Scandinavia have indicated that approximately 3 to 4 percent of workers are affected on a regular basis.¹⁸ Finnish and British studies have revealed higher prevalence rates of approximately 10 percent.¹⁹ A study of 603 Canadian nurses revealed that one third had experienced verbal abuse in the previous five days.²⁰ According to the Canadian Commission des Normes du Travail, surveys show that up to one in ten Quebec workers has been the subject of harmful bullying, intimidation, or belittlement by a boss or coworker.²¹

Estimates of bullying's prevalence in the United States vary. For example, Hornstein²² indicated that 90 percent of the workforce suffers boss abuse at some time in their careers. Another study by Namie and Namie²³ reported that a full 66 percent of all respondents experienced or witnessed workplace bullying while Keashly and Jagatic²⁴ randomly sampled Michigan residents and found that 16.7 percent of respondents reported a severe disruption of their lives from workplace harassment. Finally, a survey conducted by the Chartered Management Institute found that one third of managers were victims of workplace bullying.²⁵ These
are probably conservative estimates according to Salin\textsuperscript{26} who found that that despite being subjected to frequent bullying behavior, most targets of bullying were disinclined to label themselves as bullied.

**Consequences of Bullying to the Individual**

Studies show that bullying can have severe consequences for employee job satisfaction\textsuperscript{27} and health.\textsuperscript{28} Physical, mental, and psychosomatic health symptoms are also well established. These include stress, depression, reduced self-esteem, self-blame, phobias, sleep disturbances, digestive, and musculoskeletal problems.\textsuperscript{29} Post traumatic stress disorder, similar to symptoms exhibited after other disturbing experiences, may occur. Symptoms may persist for years. Other consequences may include social isolation, family problems, and financial problems due to absence or discharge from work.

**LAWS THAT HAVE BEEN PASSED IN OTHER COUNTRIES AND THE UNITED STATES TO COMBAT WORKPLACE BULLYING**

Given the prevalence of workplace bullying and its consequences, it is surprising that the jurisprudence surrounding workplace bullying in the United States is only beginning to be addressed. Indeed, based on recent school violence, many states are proactively developing student anti-bullying statutes to curb growing school bullying. "Bullying by students on school grounds, a subject of renewed interest for state policymakers in recent years, was most recently brought to the national spotlight by the highly publicized school shootings of the late 1990s, in which the shooters were reported to be the victims of bullies at the school."\textsuperscript{30} According to the Education Commission of the States, 17 states and Guam have enacted legislation aimed at curbing bullying by K–12 students on school property\textsuperscript{31} compared to zero states with anti-bullying workplace legislation. In this regard, the United States lags behind many parts of the world in addressing workplace bullying and, apparently, US government officials and employers place more emphasis on high profile shootings and homicides and on racial and sexual harassment, compared with more generalized workplace harassment.\textsuperscript{32}

**Workplace Bullying Legislation in Other Countries**

Sweden is the only country in the world with legislation specific to bullying. The Ordinance of the Swedish National Board of Occupational Safety and Health contains provisions on measures against victimization at work which was adopted September 21, 1993.\textsuperscript{33} By victimization is meant recurrent reprehensible or distinctly negative actions which are
Legal Remedies for Workplace Bullying

directed against individual employees in an offensive manner and can result in those employees being placed outside the workplace community. The following are some instances of victimization in the law:

- Slandering or maligning an employee and his or her family;
- Deliberately withholding work-related information or supplying incorrect information of this kind;
- Deliberately sabotaging or impeding the performance of work;
- Obviously insulting ostracism, boycott, or disregard of the employee;
- Persecution in various forms including threats, fear, or degradation;
- Deliberate insults, hypercritical or negative response or attitudes (ridicule, unfriendliness, etc);
- Supervision of the employee without his or her knowledge and with harmful intent; and
- Offensive “administrative penal sanctions” which are suddenly directed against an individual employee without any objective cause, explanations, or efforts at jointly solving any underlying problems. The sanctions may, for example, take the form of groundless withdrawal of an office or duties, unexplained transfers or overtime requirements, manifest obstruction in the processing of applications for training, leave of absence and suchlike.35

Offensive administrative sanctions are, by definition, deliberately carried out in such a way that they can be taken as a profound personal insult or as an abuse of power. The attitudes involved in offensive acts are, briefly, characterized by gross lack of respect and offend against general principles of honorable and moral behavior towards other people. The actions have a negative effect, in both the short and long term, on individuals and also on entire working groups. Consequently, these acts and sanctions are liable to cause high, prolonged stress or other abnormal and hazardous mental strains on the individual.

For the sake of clarity, it should be added that occasional differences of opinion, conflicts, and problems in working relations generally should be regarded as normal phenomena—always provided, of course, that the mutual attitudes and actions connected with the problems are not intended to harm or deliberately offend any person. Victimization does not occur until personal conflicts lose their reciprocity and respect.
for people's right to personal integrity slips into unethical actions of the kind mentioned above and individual employees are dangerously affected as a result.

Many other European and Scandinavian countries, including France, Germany, Italy, Spain, the Netherlands, and Norway, have introduced regulatory responses to workplace bullying. The European Parliament, for example, has adopted a Resolution on Harassment at the Workplace. Furthermore, the International Labour Organization, a specialized agency of the United Nations which formulates international labor standards in the form of Conventions and Recommendations setting minimum standards of basic labor rights adopted a resolution entitled Collective Agreements on the Prevention and Resolution of Harassment-Related Grievances that described workplace harassment as:

- Measures to exclude or isolate a protected (targeted) person from professional activities;
- Persistent negative attacks on personal or professional performance without reason or legitimate authority;
- Manipulation of a protected (targeted) person's personal or professional reputation by rumor, gossip, and ridicule;
- Abusing a position of power by persistently undermining a protected (targeted) person's work, or setting objectives with unreasonable and/or impossible deadlines, or unachievable tasks;
- Unreasonable or inappropriate monitoring of a protected (targeted) person's performance; and
- Unreasonable and/or unfounded refusal of leave and training.

Effective August 15, 2005, the state of South Australia implemented new workplace bullying laws, dubbed the SafeWork regulations. Under the new legislation, workplace investigators will refer bullying disputes to the South Australian Industrial Relations Commission for resolution. Also, state government departments and private organizations can now be prosecuted and fined up to $A100,000 for failing to adequately manage bullying behavior by breaching their duty of care. The regulations refer to bullying as behavior: (a) that is directed towards an employee or a group of employees, that is repeated and systematic, and that a reasonable person, having regard to all the circumstances, would expect to victimize, humiliate, undermine or threaten the employee or employees to whom the behavior is directed; and (b) that creates a risk to health or safety. Bullying does not include: (a) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline, counsel, retrench, or dismiss an employee;
or (b) a decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with an employee’s employment; or (c) reasonable administrative action taken in a reasonable manner by an employer in connection with an employee’s employment; or (d) reasonable action taken in a reasonable manner under the new regulations affecting an employee.

Beginning in June 2004, employees experiencing psychological harassment (bullying), may begin to file complaints with the Quebec Labour Standards Commission. This is the first anti-bullying law in North America and is referred to as the Workplace Psychological Harassment Prevention Act (2003). Now, Canadian employees’ quality of life at work depends on conscientious employers. When employers take such steps, bullies can be held accountable. The new Quebec law prohibits psychological harassment, defined as:

(a) any vexatious behaviour in the form of hostile, inappropriate and unwanted conduct, verbal comments, actions or gestures that affects an employee’s dignity or psychological or physical integrity and that results in a harmful workplace for the employee, and

(b) any abuse of authority, including intimidation, threats, blackmail or coercion, that occurs when a person improperly uses the power or authority inherent in the person’s position to endanger an employee’s job, undermine the employee’s job performance, threaten the economic livelihood of the employee or interfere in any other way with the career of the employee; and, for greater certainty, a single incident of such behaviour that has a lasting and harmful effect on an employee also constitutes psychological harassment.

A similar amendment was proposed to the Canada Labour Code, which applied to all federal government employees. The Workplace Psychological Harassment Prevention Act would impose fines of up to $C10,000 for hostile, inappropriate and unwanted conduct, verbal comments or gestures” as well as “any abuse of authority, including intimidation, threats, blackmail or coercion.” When the June 2004 election was called however, the bill died.

US Legislation

In the United States the law regarding bullying is in its infancy, but is making headway via lawsuits and legislation around the country. Increasingly, however, US jurisdictions are considering making it unlawful to subject an employee to an abusive work environment involving bullies.
Local Efforts

At local levels there is some deliberation of bully laws. For instance, McBride reported that in October 2003 the Providence, Rhode Island City Council introduced an ordinance to ban bullying at citywide workplaces, only to have the proposed legislation lie dormant until City Council President John J. Lombardi said in 2005 that he and other councilors were committed to adopting a citywide law to make workplace bullying illegal that could serve as a national model.\(^2\) In Ventura County, California, the Board of Supervisors are considering an anti-bullying policy after Ventura County Supervisor John Flynn allegedly abused staff and was prohibited from further contact with county employees.\(^3\) Additionally, an Indianapolis, Indiana jury recently found for the plaintiff and ordered the physician-defendant to pay a former hospital employee $325,000 on a claim of bullying, brought under the guise of intentional infliction of emotional distress and assault.\(^4\)

State Efforts

At present, there are no state laws that specifically address workplace bullying. However, in August 2001, the California Supreme Court hinted that legislation on bullying might be warranted. In *Torres v. Parkhouse Tire Service, Inc.*, an employee sued his employer and a coworker for personal injury and loss of consortium resulting from a coworker lifting him off the ground several times and dropping him on his knees. Although the California Supreme Court tied bullying to a protected class, the court commented as follows:

> In any event, aggressive physical bullying is one of the common tools of racial and gender-based harassment and sometimes leads to injury, whether or not injury is specifically intended. That the Legislature might wish to deter this obnoxious behavior by the threat of civil liability should not trouble us.\(^5\)

Legislators in a number of states (see Figure 2, below) have attempted, or are attempting, to introduce legislation to combat workplace bullying. While some bills have died in committee\(^6\) others are currently awaiting action. Additionally, there is pre-bill activity occurring in New York State.\(^7\) Such state initiatives have used variations of the anti-bullying legislation, named the “Healthy Workplace Bill” developed by Professor David C. Yamada, of Suffolk University Law School in conjunction with the Workplace Bullying & Trauma Institute of Bellingham, Washington.\(^8\) Enacted legislation would make workplace bullying an unlawful employment practice and allow employees to bring civil actions.
## Figure 2. State Law Related to Workplace Bullying

<table>
<thead>
<tr>
<th>State</th>
<th>Date</th>
<th>Legal Recourse</th>
<th>Summary of Proposed Legislation</th>
<th>Disposition</th>
<th>Expected Further Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hawaii</td>
<td>2005–2006</td>
<td>Yes</td>
<td>HB2840 prohibits the “unlawful employment practice of subjecting an employee to an abusive work environment” and provide a “legal recourse for employees who have been psychologically, physically, or economically harmed by being deliberately subjected to abusive work environments.”</td>
<td>In committee</td>
<td>Awaiting further action, 2006</td>
</tr>
<tr>
<td>Oregon</td>
<td>2005</td>
<td>Yes</td>
<td>HB 2639 declares workplace bullying an “unlawful employment practice,” and creates a cause of action allowing employees to bring a civil action alleging workplace bullying.</td>
<td>In committee</td>
<td>Awaiting further action, 2006</td>
</tr>
<tr>
<td>Missouri</td>
<td>2006</td>
<td>Yes</td>
<td>HB 1187 makes it an unlawful employment practice to subject an employee to an abusive work environment or to retaliate against an employee who opposes that type of environment.</td>
<td>Referred to Workforce Development &amp; Workplace Safety Committee on January 26, 2006</td>
<td>Awaiting further action, March 2006. Proposed Effective date: August, 2006.</td>
</tr>
<tr>
<td>Kansas</td>
<td>2006</td>
<td>Yes</td>
<td>HB 2990 filed March 1, 2006 seeks protection for all employees, working for either public or private employers, regardless of protected group status, who seek redress for being subjected to an abusive work environment. It becomes unlawful to be subjected to another employee whose malicious conduct sabotages or undermines the targeted person’s work performance.</td>
<td></td>
<td>Awaiting further action, 2006</td>
</tr>
</tbody>
</table>
Federal Efforts

There is currently no specific legislation addressing workplace bullying at the federal level. On June 22, 2004, Sen. Tom Harkin (D-Iowa) introduced an omnibus bill called the HeLP (Healthy Lifestyle and Prevention) America Act (S2558) (US Senate Bill S2558, 2004). A wide-ranging act, it called for the creation of programs to stimulate health promotion in the workplace, including stress management. Sen. Harkin's bill, which does not specifically address bullying, is unlikely to pass in its present form (over 300 pages with at least 20 programs to stimulate health promotion in the workplace, school, and community), but it is important for recognizing the role health promotion can play in enhancing workplace environments.

Further attempts at introducing workplace bullying are no doubt forthcoming and in time such legislation may become more commonplace. The American legal system has been hesitant to legislate manners or civility in the workplace (outside of the civil rights laws), but this attitude might soon change as the problem becomes more recognized and acknowledged, and legal remedies will no doubt be found. Nevertheless, some believe that broad definitions of harassment and bullying may open the door to more tenuous or problematic complaints (e.g., a raised voice is perceived as yelling or a rap on the table for emphasis is perceived as threatening). “You could end up with ‘He’s been mean to me for three months and yelled at me four times’ as a triable offense,” said Los Angeles attorney Michael Bononi, an expert in employment law. “It could create a nightmare for employers and the courts. There is no law against being a jerk in the workplace.”

INDIVIDUAL LEGAL REMEDIES

At its core, workplace bullying consists of repetitive non-gender-based harassing acts by (generally) a supervisor directed to one or several underlings which, if allowed to fester, can lead to a hostile work environment and employer liability. Notwithstanding the “growing body of statutory and common-law protections for workers—particularly status-based employment discrimination laws and tort claims for emotional distress—[workplace bullying cases] have generally not been effective.”

However, recent trends and decisions portend a possible ‘workplace bully’ cause of action, whether based on new statutory remedies, supra, or adaptation of existing causes of action as show below. This section discusses whether any of four existing cause of actions, Title VII sexual harassment, intentional infliction of emotional distress, intentional interference with business relationships, and constructive discharge, can be adapted or extended to include workplace bullying.
Can the Title VII Sexual Harassment Cause of Action Be Extended to Include Workplace Bullying?

The jurisprudence of sexual harassment in the United States is well-settled, rooted mainly in violations of Title VII of the Civil Rights Act of 1964 (Title VII) which holds employers vicariously liable for discrimination. To succeed on a harassment claim, a plaintiff must show:

1. That he or she was a member of a “protected class,” viz., race, color, religion, sex, or national origin;
2. That he or she was subjected to unwelcome harassment;
3. That the harassment complained of was based on a protected characteristic;
4. That the harassment was sufficiently severe or pervasive to create a hostile or abusive working environment; and
5. That a basis of employer liability exists.

Title VII harassment based on sex generally takes two forms: *quid pro quo* and hostile environment harassment. *Quid pro quo* harassment occurs when economic benefits such as promotions and raises are given by a supervisor in exchange for sexual favors. Hostile work environment, on the other hand, occurs when “the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” A hostile environment claim requires a showing of a pattern of offensive conduct, unless the isolated instance is unusually severe. And even if individual acts do not constitute a hostile environment separately, they can be actionable when the conduct, taken as a whole, leads to an environment that the employee “reasonably” perceives as abusive or hostile. It is up to the trier of fact to determine whether the conduct of the supervisor or colleague is such that it “unreasonably interfer[es] with an individual’s work performance” or creates “an intimidating, hostile, or offensive working environment.” Moreover, an employer may be liable for sexual harassment, even when the employee has suffered no economic loss.

In 1998, the Supreme Court decided the “twin towers” of sexual harassment jurisprudence, the *Faragher v. City of Boca Raton* and *Burlington Industries v. Ellerth* cases which definitively set the guidelines for employer liability for sexual harassment under Title VII. In both cases, the Court held that an employer is strictly liable for supervisor harassment that “culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment.” In *Faragher*, the Court held that an employer (the City of Boca Raton) could be liable for
sexual harassment by its supervisor even if the employer was unaware of the behavior.\textsuperscript{68} And in \textit{Burlington}, the Court expanded \textit{Meritor} by holding that while an employer may be held liable for sexual harassment absent a “tangible employment action,”\textsuperscript{69} the employer could raise a two-prong affirmative defense to liability by first, establishing that it “exercised reasonable care to prevent and correct promptly any sexually harassing behavior,”\textsuperscript{70} and second, by establishing that the “plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.”\textsuperscript{71} Later that year, in \textit{Oncale v. Sundowner},\textsuperscript{72} the Supreme Court held that ‘same-sex’ sexual harassment is actionable as sex discrimination under Title VII.

Liability for sexual harassment under Title VII has been based on the specially designated status of the plaintiff,\textsuperscript{73} even though both Supreme Court and lower court cases contain status-free language that could be used to create a cause of action for severe, pervasive, or abusive work environment. Courts, however, have been unwilling to expressly extend Title VII protection to non-status based workplace harassment, even when the supervisor’s behavior creates an otherwise hostile or abusive environment. For example, in \textit{Hesse v. Avis Rent A Car},\textsuperscript{74} the plaintiff filed a Title VII suit for workplace harassment, discrimination, and retaliation based on her supervisor’s bullying behavior. The suit, which began with Hesse’s supervisor’s “squeaking shoes” deteriorated into the supervisor’s yelling, banging on desks, and clapping hands loudly at both male and female employees. Hesse claimed this behavior interfered with the job performance of all employees in the office. On appeal, the Eighth Circuit Court of Appeals reversed and denied Hesse’s claim, holding that “Hesse was entitled to protection from discrimination or harassment in her employment at Avis if she can show that it was based on sex. Thus, generalized harassment in the workplace is not illegal under Title VII.”\textsuperscript{75}

Nevertheless, in \textit{EEOC v. National Education Association},\textsuperscript{76} the Ninth Circuit Court of Appeals left a possible legal loophole to expand application of Title VII to workplace bullying that is not “based on sex.” The appeal presented the question of whether harassing conduct by a supervisor directed at female employees violated Title VII in the absence of direct evidence that the harassing conduct or the intent that produced it was because of “sexual animus.”\textsuperscript{77} In reversing the lower court, the Ninth Circuit held that “offensive conduct that is not facially sex-specific nonetheless may violate Title VII if there is sufficient circumstantial evidence of qualitative and quantitative differences in the harassment suffered by female and male employees.”\textsuperscript{78}

Although, workplace bullying is intimidating, offensive, repetitive, and systematic, and clearly leads to a hostile environment,\textsuperscript{79} it remains to be seen whether a status free Title VII harassment action will be addressed by our court systems.\textsuperscript{80} Perhaps the time has come for progressive courts
to create a status-free hostile environment doctrine as a broad basis to hold employers liable for their abusive, bullying bosses.

**Can the Doctrine of Intentional Infliction of Emotional Distress Be Used Against Workplace Bullies?**

One of the primary non-status based legal theories plaintiffs use to seek relief for maltreatment in the workplace is intentional infliction of emotional distress (IIED). To prevail on an IIED claim, the plaintiff must prove that:

1. The defendant acted intentionally or recklessly;
2. The conduct was extreme and outrageous;
3. The defendant's actions caused the plaintiff emotional distress; and
4. That the resulting emotional distress was severe.\(^8\)

IIED generally requires extreme words or conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community... [where] recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'"\(^9\)

Typically, extreme and outrageous conduct can be demonstrated by physical symptoms such as high blood pressure, disturbance to the nervous systems, nausea, general physical illness, depression, and insomnia.\(^8\) To determine whether certain conduct is extreme and outrageous, Texas courts, for instance, consider the context and the relationship between the parties.\(^4\) In the employment context, a claim for IIED does not lie for ordinary employment disputes so a plaintiff-employee must prove the existence of some conduct that brings the dispute outside the scope of employment and into the realm of extreme and outrageous conduct.\(^5\)

Plaintiffs have sought to impose liability for IIED on both their employers and the specific workers, often supervisors, who engaged in the alleged conduct. In Texas, for example, IIED is a judicially created 'gap filler' tort for the "limited purpose of allowing recovery in those rare instances in which a defendant intentionally inflicts severe emotional distress in a manner so unusual that the victim has no other recognized theory of redress."\(^6\) When repeated or ongoing severe harassment is shown, the conduct should be evaluated as a whole in determining whether it is extreme and outrageous.\(^7\) For example, in *Turnbull v. Northside Hospital, Inc.*,\(^8\) the plaintiff based her complaint on IIED. In granting the defendant-hospital's motion for summary judgment, the
Georgia Court of Appeals noted that while “glaring at plaintiff with purported anger and contempt, crying, slamming doors, and snatching phone messages from plaintiff’s hand was childish and rude, but it is not the type of behavior for which the law grants a remedy.”

The liability for intentional infliction of emotional distress clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. The rough edges of our society are still in need of filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to occasional acts that are definitely inconsiderate and unkind.

Notably, the court found persuasive the absence of cursing, derogatory remarks about the plaintiff, and verbal and physical threats. Courts in other states have treated IIED cases in a similar fashion.

Bully behavior, on the other hand, may not be “extreme” or “outrageous” and therefore hard to objectively prove. As a result, plaintiffs have had difficulty in successfully prosecuting workplace bullying claims under the guise of IIED, with one notable exception: the landmark case of *Doescher v. Raess* (Indianapolis, 2005) in which a former hospital employee, sued the hospital on a claim of workplace bullying by one of its doctors. The case was based on workplace bullying and intentional infliction of emotional distress. The Marion Superior Court of Indianapolis, Indiana ordered heart surgeon, Dr. Daniel H. Raess, to pay a former hospital employee $325,000. The attorney for the doctor found liable for workplace bullying is appealing the jury’s $325,000 verdict. His main legal point to appeal: there is “no such thing as ‘workplace bullying.’” The case is still on appeal to the Indiana Supreme Court.

**Can Intentional Interference with Contracts or Constructive Discharge Be Used Against Workplace Bullies?**

The law protects those in the pursuit of their livelihood and against unlawful interference. This section will examine whether intentional interference with contracts or constructive discharge are viable legal remedies for workplace bullying.

**Intentional Interference with Contracts**

The Restatement of Torts (Second) contains the two main provisions relating to interference with contractual relations, Sections 766 and 766A, but they serve different purposes.

One who intentionally and improperly interferes with the performance of a contract between another and a third person by inducing or otherwise causing the third person not to perform the contract, is
subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.96

One who intentionally and improperly interferes with the performance of a contract between another and a third person, by preventing the other from performing the contract or causing his performance to be more expensive or burdensome, is subject to liability to the other for the pecuniary loss resulting to him.97

Not only do these sections serve different purposes, but Section 766A, often used by plaintiffs in these types of cases, is much more difficult to apply. In particular, courts have grappled with the issue of whether Section 766A can encompass a supervisor or a colleague in the workplace. The Third Circuit Court of Appeals noted

Section 766 addresses disruptions caused by an act directed not at the plaintiff, but at a third person: the defendant causes the promisor to breach its contract with the plaintiff. Section 766A addresses disruptions caused by an act directed at the plaintiff: the defendant prevents or impedes the plaintiff's own performance.98

Hypothetically, the parties in Section 766A would be as follows: the supervisor (the "one") prevents or causes the plaintiff's (the "another") performance to his or her employer (the "third party") to be more expensive or burdensome. The law protects not only those contracts already made, but also protects the employee's implied and express contractual interests in continued economic gain and employment.99 An employee who therefore is terminated, resigns, or suffers other adverse action as a result of a supervisor (or coworker's) actions may have a claim against not only the company but also the supervisor-defendant. As a result, a growing number of courts are ruling that employers may be vicariously liable for the supervisor's intentional actions under Section 766A that prevent or interfere with the plaintiff-employee's contractual performance to the company. This, notwithstanding a supervisor's intentional interference with a coworker's employment is legally adverse to the company's interests and therefore outside the scope of employment.

In O'Brien v. New England Telephone and Telegraph,100 for example, the plaintiff sued both her employer and her supervisor personally. The Massachusetts Supreme Court held that a supervisor could be held personally liable for engaging in a course of abusive, harassing conduct towards the plaintiff that was unrelated to the company's corporate interests. In its findings the court noted that the supervisor

unlawfully and intentionally interfered with the plaintiff's employment relationship, that the [supervisor's] conduct towards the plaintiff was motivated by actual malice unrelated to the employer's legitimate
corporate interests and that the [supervisor’s] treatment of the plaintiff caused her to commit the misconduct that led to her discharge.  

While the court vacated O’Brien’s award damages and attorney fees, it affirmed the verdict against the supervisor.

Similarly, in *Eserbut v. Heister*, a Washington court found that “the co-employees can be held liable for intentionally interfering with the [plaintiff’s] employment” when they “intentionally, directly, and substantially interfere with the performance of the plaintiff’s work responsibilities” knowing that plaintiff’s termination or resignation is substantially certain. In *Eserbut*, several of the plaintiff’s coworkers isolated him “by not communicating with and socially ostracizing him” causing sleeplessness, depression, and indigestion. These physiological responses interfered with plaintiff’s job performance and ultimately resulted in his resignation. And in *Zimmerman v. Direct Federal Credit Union*, the plaintiff claimed DFCU and her immediate supervisor, David Brislin, engaged in gender and pregnancy discrimination, violated the Family Medical Leave Act, caused a loss of consortium with her husband, retaliated against her filing of claims, and interfered with “advantageous relations,” i.e., economic or employment interests. The jury held for plaintiff noting that defendants “engaged in a deliberate campaign to render [Zimmerman] a pariah among her coworkers.” In affirming the jury’s punitive damages award, the court noted the defendant “undertook a deliberate, calculated, systematic campaign to humiliate and degrade [the plaintiff] both professionally and personally.”

Such intentional interference is a promising cause of action for bullied employees, notwithstanding the fact that individual supervisors may not have the financial resources to make a lawsuit worthwhile from the standpoint of recovering monetary damages. And, while not all state courts agree on the legal description of the parties necessary to invoke this legal theory, a growing number of states given the right factual context, do allow this common law cause of action to be used to sue abusive supervisors and coworkers while holding employers liable for their supervisors’ actions.

**Constructive Discharge**

Closely linked to the intentional interference with contracts claim could be a constructive discharge claim. In addition to—or perhaps as a result of—intentional interference with contracts, studies show that it is increasingly common for employees to resign because of harsh, unreasonable employment conditions placed upon the individual by the employer. A resignation based on intolerable working conditions such that an employee is forced to resign is a constructive discharge. The EEOC has ruled, at least with respect to Title VII sexual harassment cases, that an employer is liable for constructive discharge when
it imposes intolerable working conditions in violation of Title VII when those conditions foreseeably would compel a reasonable employee to quit, whether or not the employer specifically intended to force the victim's resignation.111 In Pennsylvania State Police v. Suders,112 the Supreme Court held that an employer may be liable under Title VII for a hostile work environment that results in a "constructive discharge" of an employee. The Supreme Court found that Suders's working environment became "so intolerable" due to "a humiliating demotion, extreme cut in pay, or transfer to a position in which she would face unbearable working conditions"114 that the plaintiff's resignation qualified as a fitting response. The constructive discharge action was recently affirmed by the Supreme Court in Arbaugh v. Y & H Corporation.115

At the Circuit Court level, the majority of courts use a reasonable person standard to prove constructive discharge.116 In other words, the plaintiff must show that working conditions were intolerable to a "reasonable person," leaving the employee with no recourse but to resign. In Walker v. UPS of America, Inc.,117 the Tenth Circuit Court of Appeals noted that "constructive discharge occurs when the employer by its illegal discriminatory acts has made working conditions so difficult that a reasonable person in the employee's position would feel compelled to resign. The conditions of employment must be objectively intolerable; the plaintiff's subjective views of the situation are irrelevant."118

And in Honor v. Booz-Allen & Hamilton, the Fourth Circuit opined that although demotion can in some cases constitute a constructive discharge, "... dissatisfaction with work assignments, a feeling of being unfairly criticized, or difficult or unpleasant working conditions are not so intolerable as to compel a reasonable person to resign."119 In Landgraf v. USI Film Prods.,120 the Fifth Circuit held that for a plaintiff to recover on a constructive discharge claim, a plaintiff must prove that "working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign."121 The overwhelming majority of cases involving constructive discharge are linked to Title VII claims. However, constructive discharge is a common law cause of action and can stand on its own legal footing. Constructive discharge, coupled with intentional interference with contracts, could give employees a viable, status-free cause of action against workplace bullies.

**CONCLUSION**

Bullying differs from harassment in that there is no obvious bias towards race, gender or disability. Bullies are usually cunning enough to keep their prejudices under wraps. As evolving law rescinds opportunities for physical violence and for the expression of prejudices through discrimination and harassment, it seems that the more devious harassers modify the focus of their behavior such that they remain
outside the provisions of current legislation. They often gravitate from physical violence to psychological violence (i.e., bullying) which is harder to prove and less well-covered by legislation.

The business case for anti-bullying policies and practices is compelling yet remains among the workplace's unchecked problems, lowering morale and productivity while driving up health care costs and making employers vulnerable to lawsuits and disability claims. Unfortunately, much more attention is directed at bully behavior in Europe, Scandinavia, Canada, and Australia than in the United States. It is hoped that American firms begin to recognize that bullies poison their work environment with low morale, job dissatisfaction, fear, anger, and depression. It must be understood that the employer pays for this in lost efficiency, absenteeism, sick leave due to stress-related illnesses, high staff turnover, severance packages, law suits, self-defensive paperwork, and wasted time at work involving targets defending themselves and networking for support. In extreme cases, violence may be the tragic result of workplace bullying.122

No manager needs to read court decisions to know that behavior violating standards of human decency cannot be tolerated. Yet, managers also know that individuals occasionally violate social and legal norms. To minimize the chance of such deviations, employers must act proactively by establishing policies and action plans that prevent bullying since individual options often seem limited. Eliminating bullying is one of the many pieces needed to manage people well. Indeed, organizations that effectively manage people outperform those that do not by 30 percent to 40 percent,123 while maintaining a pleasant and potentially productive working environment.

Legal considerations of bullying are clearly in their infancy, but making headway into lawsuits and legislation around the country. The emergence of bullying law appears to coincide with the decrease in severe sexual harassment claims. Such claims have diminished through revamped policies and reporting procedures, recurring training, employers promptly addressing claims, and increased media attention. But, just as employers began to get a handle on sexual harassment, the definition of "harassment" seems to have expanded.124 Policies have begun appearing in workplaces that not only prohibit unlawful sexual harassment, but prohibit all forms of harassment, including incivility among coworkers. These "general harassment" policies are usually drafted broadly to cover a wide range of behaviors and their victims need not be protected classes who seek recourse under job-discrimination laws (ones protecting workers from bias based on race, gender, ethnicity, age, or disability).125

It would be difficult to argue that workers are not entitled to work in an environment free of such behaviors, but some detractors believe broad definitions of harassment open the door to more tenuous or problematic complaints. Regardless of the pros and cons, we feel that "general harassment" policies generally encompass bullying behaviors and will
provide recourse for targeted employees and that legislation and regulatory activities in this area are similar to the state of sexual harassment in the 1980s. In time American employees will be protected from workplace bullying construed as harassment.

NOTES


12. Namie, supra n.1, at 1–6.


30. Jennifer Dounay, “State Anti-Bullying Statutes” (2005, April), available at Education Commission of the States http://www.ecs.org/clearinghouse/60/41/6041.htm (last visited March 30, 2006). According to the report, Bullying by students on school grounds, a subject of renewed interest for state policymakers in recent years, was most recently brought to the national spotlight by the highly publicized school shootings of the late 1990s, in which the shooters were reported to be the victims of bullies at the school. Heightening this attention is the growing body of research on (1) the prevalence of bullying in K-12 schools, (2) the likelihood of school bullies to develop more serious socio-emotional problems with the passage of time and (3) the impact of bullying on its victims and school climate in general. In the late 1990s, in response to this convergence of recent events and research, state legislatures began to adopt or strengthen existing policies aimed at curbing bullying by K-12 students on school property.

31. Id.
34. Id. at 7–8.
39. Quebec Labour Standards Act, at Section 81.18 (R.S.Q., chapter N-1.1).
40. Workplace Psychological Harassment Prevention Act, at Section a, b (2003).
46. Id. at 12.
47. In Oklahoma, the Abusive Work Environment Act which defined abusive conduct as conduct of an employer or employee in the workplace "that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interest" died in committee, 2004. Between 2003–2004, various bills introduced in the California legislature making it unlawful to subject another employee to repeated, malicious infliction of verbal abuse, engages in verbal or physical behaviors that a reasonable person would find threatening, intimidating, or humiliating, or performs gratuitous sabotage or undermining of the targeted person's work performance through acts of commission or omission died in committee. In Washington state, a workplace bully bill which defined workplace bullying (but created no cause of action), died in committee, 2005–2006.
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50. Grassroots Advocacy Kit, supra n.35.

51. The ballot asked whether

the state representative from this district be instructed to introduce and vote in favor of legislation that: (1) declares workplace psychological harassment (bullying) to be an occupational health and safety issue; (2) mandates a study to analyze the direct and indirect costs of workplace psychological harassment upon healthcare and insurance rates within the Commonwealth and upon Massachusetts families and; (3) requires all employers who employ 50 or more workers in Massachusetts to put into place by December 31st, 2005, a policy that defines psychological harassment and prevents its occurrence.

Results found that 68 percent (8,181) of the 12,031 district voters said to pass the question.

52. Saillant, supra n.43.


55. The Restatement Second of Agency 2191 provides that “a master is subject to liability for the torts of his servants committed while acting in the scope of their employment.”


60. This is particularly true when the harassment is physical. Thus, in Barrett v. Omaba National Bank, 584 F. Supp. 22, 35 FEP Cases 585 D. Neb. 1983, aff'd, 726 F.2d 424, 33 EPD ¶ 34,132 8th Cir. 1984, one incident constituted actionable sexual harassment. The harasser talked to the plaintiff about sexual activities and touched her in an offensive manner while they were inside a vehicle from which she could not escape. As the Supreme Court noted in Vinson, “mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee would not affect the conditions of employment to a sufficiently significant degree to violate Title VII.” 106 S. Ct. at 2406 quoting Rogers v. EEOC, 454 F.2d 234, 4 EPD ¶ 7597 5th Cir. 1971, cert. denied, 406 U.S. 957, 4EPD ¶ 7838 1972. The more severe the harassment, the less need to show a repetitive series of incidents.

61. Instigators may claim that the target was simply too sensitive or that his or her words were meant in jest. Consequently, the bully's conduct should be evaluated from the objective standpoint of a reasonable person. Regulatory acts should not serve “as
a vehicle for vindicating the petty slights suffered by the hypersensitive" Zabkowicz v. West Bend Co., 589 F. Supp. 780, 784, 35 EPD ¶ 34, 766 E.D. Wis. 1984; see also Ross v. Comsat, 34 FEP cases 260, 265 D. Md. 1984, rev'd on other grounds, 759 F.2d 355 4th Cir. 1985. Thus, if the challenged conduct would not substantially affect the work environment of a reasonable person, no violation should be found.

62. Harris, supra n.56.

63. 29 C.F.R. § 1604.11a3. Thus, sexual flirtation or innuendo, even vulgar language that is trivial or merely annoying, would probably not establish a hostile environment. Meritor at 64, quoting Henson v. City of Dundee, 682 F.2d at 904.

64. Meritor, supra n.57. The language of Title VII is not limited to "economic" or "tangible" discrimination and EEOC Guidelines fully support the view that sexual harassment leading to non-economic injury can violate Title VII. The Court in Meritor noted, "In 1980 the EEOC issued Guidelines specifying that 'sexual harassment,' as there defined, is a form of sex discrimination prohibited by Title VII. * * * [T]hese Guidelines, "while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance," General Electric Co. v. Gilbert, 429 U.S. 125, 141-142 1976, quoting Skidmore v. Swift and Co., 323 U.S. 134, 140 1944. The EEOC Guidelines fully support the view that harassment leading to noneconomic injury can violate Title VII.")


68. Faragher, supra n.65, at 765.

69. A tangible employment action includes actions "such as discharge, demotion, or undesirable reassignment." Ellerth, 524 U.S. at 765.

Under Title VII of the Civil Rights Act of 1964 42 USCS 2000e et seq., an employee who refuses the unwelcome and threatening sexual advances of a supervisor, yet suffers no adverse and tangible job consequences, can recover against an employer without showing that the employer is negligent or otherwise at fault for the supervisor's actions; * * * [however] an employer * * * may, when no tangible employment action is taken, raise an affirmative defense to liability or damages.

70. Id. at 765; Faragher, supra n.65, at 807.

71. Ellerth, 524 U.S. at 765; Faragher, 524 U.S. at 807.


73. Legal status is created in Title VII, based on, e.g., race, color, ethnicity, or sex.

74. Hesse v. Avis Rent A Car, 394 F.3d 624, 8th Cir. 2004.

75. Id. at 630, citing Oncale, supra, n.72, at 80 (emphasis added).

76. EEOC et al., v. National Education Association, 422 F.3d 840 (9th Cir. 2005).

77. Id. at 845.
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There was no evidence presented at trial that the supervisor made sexual overtures or lewd comments, that he referred to women employees in gender-specific terms, or that he imposed gender-specific requirements upon women employees. Where, as here, the conduct in question was allegedly a “daily thing,” there can be little question that a reasonable juror might infer that the supervisor’s pattern of verbal and physical intimidation, as confirmed by a wide range of employees, was sufficiently severe to satisfy the statute.

78. Id.

79. Research conducted in Sweden found bullying behavior to be that which recurs on a regular basis for a period of six months or more and an Irish taskforce on workplace bullying found that bullies tend to operate over a long period of time, often with minor actions which accumulate to create a hostile work environment. An isolated incident of the behavior described may be an affront to dignity at work but, as a single incident, is not considered to be bullying. Karinda Flavell, Workplace Bullying, Retrieved December 2, 2005, from http://www.apesma.asn.au/women/articles/workplace_bullying_may_02.asp.

80. Nonetheless, the local level and state level are addressing “workplace bullying” and “school house bullying” by appealing to the legislation. Although several states are currently waiting for action on their “workplace bullying bill,” three other states have tried and failed to pass such legislation.


84. See GTE Southwest, supra n.81, at 612; Tiller v. McLure, 121 S.W.3d 709, 714, 46 Tex. Sup. Ct. J. 632 Tex. 2003 per curiam.

85. GTE Southwest, supra n.81, at 612.


87. GTE Southwest, supra n.81, at 616.


89. Id. at 466.

90. Id.

91. See, e.g., Morales-Vallellanes v. Potter, 339 F.3d 9 2nd Cir. 2003, Riley v. Harr, 292 F.3d 282 1st Cir. 2002, Brown v. Muhlenberg Twp., 269 F.3d 205 3d Cir., 2001; Gregory v. Daly, 243 F.3d 687 2nd Cir. 2001. In Denton v. Chittendon Bank, 163 Vt. 62; 655 A.2d 703; 1994 Vt. LEXIS 182; 130 Lab. Cas. CCH P57,910, 1994 the Vermont Supreme Court found for an employer and supervisor where the plaintiff alleged that the supervisor “embarked on an insulting, demeaning, and vindictive course of conduct toward [the plaintiff] that included ridicule, invasions of privacy, intentional interference with ability to car pool, competitiveness in afterwork sports, and an unreasonable workload.” Liability should not be extended for “a series of indignities,” wrote the court, adding that “absent at
least one incident of behavior" such as retaliation or an act of extreme humiliation, "incidents that are in themselves insignificant should not be consolidated to arrive at the conclusion that the overall conduct was outrageous." In Mirzaie v. Smith Cogeneration, Inc., 1998 OK CITV APP 123; 962 P.2d 678; 1998 Okla. Civ. App., the Oklahoma Court of Civil Appeals affirmed a trial court's dismissal of an IIED claim where the plaintiff had alleged that his supervisor, among other things, yelled at him in front of other company executives, called him at 3:00 a.m. and "browbeat him for hours," required him to "needlessly cancel vacation plans," refused to allow the plaintiff to spend a day at the hospital with his wife after the birth of their son, intentionally called plaintiff's wife by the plaintiff's former wife's name, and delivered the notice of termination two hours before the plaintiff's wedding. There was nothing "in this working milieu," said the court, "that would elevate the recited facts to the 'outrageous' level." In Crowley v. North American Telecommunications Ass'n, 691 A.2d 1169; 1997 D.C. App. LEXIS 65; 134 Lab. Cas. CCH P58,291, 1997 the District of Columbia Court of Appeals affirmed the dismissal of an IIED claim where the plaintiff alleged "only that he was subjected to contempt, scorn and other indignities by his supervisor and an unwarranted evaluation and discharge." "While offensive and unfair, such conduct is not in itself of the type actionable on this tort theory," noted the court.

92. See Joseph E. Doescher v. Daniel H. Raess, M.D., 2005 http://www.workdoctor.com/press/indy030505.html. The award to Joseph E. Doescher, 44, stemmed from a November 2, 2001, confrontation between the two men during which Raess was accused of screaming and lunging toward Doescher and that Raess' behavior in the operating room made it impossible for him to return to work. Doescher worked at the hospital as a perfusionist, operating equipment that oxygenates the blood during surgery. Doescher was earning $100,000 a year before the incident and at trial earned only $20,000 working in a dog kennel. Plaintiff's counsel described the defendant as "a domineering manager who viewed himself as untouchable." Defense characterized the plaintiff as an "active participant" in a "shouting match between two strong-willed individuals."


95. Restatement (Second) of Torts (1977).

96. Id. § 766.

97. Id. § 766A (emphasis added).


101. Id.


103. Id. at 495.

104. Id.

105. Id.

107. Id. at 145.

108. Id. at 144.

109. See, e.g., Lewis v. Oregon Beauty Supply, Inc., 02 Ore. 616, 733 P.2d 430 (Ore. 1987) in which the Oregon Supreme Court was unwilling to consider a supervisor as a ‘third party’ for purposes of filing an intentional interference with a contract action by holding that a “company cannot be liable for interference with an employment relationship to which it is a party.”


111. See, e.g., Derr v. Gulf Oil Corp., 796 F.2d 340, 344 (10th Cir. 1986); Goss v. Exxon Office Systems Co., 747 F.2d 885, 888 (3rd Cir. 1984); Nolan v. Cleland, 686 F.2d 806, 813 (9th Cir. 1982).


113. Id. at 133.

114. The Court opined, “With respect to a plaintiff-employee’s Title VII claim for constructive discharge resulting from sexual harassment by a supervisor, the employer may, in some cases, properly defend against such a claim by showing that (a) the employer had installed a readily accessible and effective policy for reporting and resolving complaints of sexual harassment, and (b) the plaintiff unreasonably failed to make use of such a preventive or remedial apparatus.” Suders at 130.


116. There are cases that require evidence of the employer’s subjective intent. See, e.g., EEOC v. Clay Printing Co., 955 F.2d 936 (4th Cir. 1992) where the court ruled against the plaintiff because there was a “lack of concrete evidence” that the employer intended that the plaintiffs quit. Id. at 942; Martin v. Cavalier Hotel Corp., 48 F.3d 1343 (4th Cir; 1995) in which the court held that there was insufficient evidence from which a jury could conclude that [the employer’s] conduct demonstrated an intention to force Martin to quit.” Id. at 1350.


118. Id. at 890 (emphasis added).


120. Landgraf v. USI Film Prods., 968 F.2d 427 (5th Cir. 1992).

121. Id. at 429.


125. For example: The term harassment is defined as any verbal, written, or physical conduct directed toward an individual or group of individuals which a person knows or has reasonable grounds to know would intimidate, demean, or degrade the individual's
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or group’s character, self-worth or dignity. Harassment is further defined as that conduct which has the effect of limiting or denying equal opportunity or treatment and is conducted in disregard for that individual’s or group’s human or civil rights and which may result in their mental, emotional, or physical discomfort, ridicule or harm. Offensive language or behavior which interferes with a person’s employment or performance or otherwise creates a hostile environment shall fall within the meaning of harassment.