

Employment-Related Claims

Sexual Harassment: There are 2 distinct types of sexual harassment: quid pro quo and hostile work environment. But a work environment can be hostile to those of a particular age or race, too - not just based on sex/gender.

Quid pro quo: To establish a claim for “quid pro quo” sexual harassment, you must prove (1) you were an employee or job applicant of the defendant, or you were providing services pursuant to a contract with the defendant, (2) the alleged harasser made unwanted sexual advances to you or engaged in other unwanted verbal or physical conduct of a sexual nature, (3) job benefits were conditioned, by words or conduct, on your acceptance of the alleged harasser’s sexual advances or conduct - or employment decisions affecting you were made based on your acceptance or rejection of the alleged harasser’s sexual advances or conduct, (4) at the time of his or her conduct, the alleged harasser was a supervisor or agent for the defendant, (5) you were harmed, and (6) the alleged harasser’s conduct was a substantial factor in causing your harm. CACI 2520.

Hostile Work Environment: There are 3 types of claims:

Conduct directed at Plaintiff: To establish a claim that you were subjected to a hostile or abusive work environment, you must prove that (1) you were an employee of, or a person providing services under a contract with, the defendant - or the individual defendant participated in, assisted or encouraged the harassing conduct, (2) you were subjected to unwanted “harassing conduct” because you were (or were believed to be) of a protected status (e.g., female, over 40, Hispanic), or associated with a person of the protected class, (3) the conduct was “severe or pervasive”, (4) a reasonable member of the protected group (e.g., woman) in your circumstances would have considered the work environment to be hostile or abusive, (5) you considered the work environment to be hostile or abusive, (6) a supervisor engaged in the conduct - or the defendant or its supervisors or agents knew or should have known of the conduct and failed to take immediate and appropriate corrective action, (7) you were harmed, and (8) the conduct was a substantial factor in causing your harm. CACI 2521A & 2522A.

Conduct directed at Others: If the plaintiff is not the target of the harassment, he or she can still establish a claim for a hostile or abusive work environment if he or she personally witnessed harassing conduct that took place in his or her immediate work environment (directed to coworkers), which was severe or pervasive. CACI 2521B & 2522B.

Widespread Sexual Favoritism: To establish a claim of a hostile work environment created by widespread sexual favoritism, you must prove that there was sexual favoritism in the work environment, which was widespread and also severe or pervasive. "Sexual favoritism" means that another employee has received preferential treatment with regard to promotion, work hours, assignments, or other significant employment benefits or opportunities because of a sexual relationship with an individual representative of the employer who was in a position to grant those preferences. CACI 2521C.

Explanations and Definitions:

"Harassing Conduct": Harassing conduct may include (a) verbal harassment, such as obscene language, demeaning comments, slurs or threats, (b) physical harassment, such as unwanted touching, assault or physical interference with normal work or movement, (c) visual harassment, such as offensive posters, objects, cartoons or drawings, or (d) unwanted sexual advances. CACI 2523.

"Severe or Pervasive": "Severe or pervasive" means conduct that alters the conditions of employment and creates a hostile or abusive work environment. A jury will consider all the circumstances, including (a) the nature of the conduct, (b) how often, and over what period of time, the conduct occurred, (c) the circumstances under which the conduct occurred, (d) whether the conduct was physically threatening or humiliating, and (e) the extent to which the conduct unreasonably interfered with an employee's work performance. CACI 2524.

"Supervisor": One is a supervisor if he or she had the discretion and authority (a) to hire, transfer, promote, assign, reward, discipline or discharge or take other adverse employment action against other employees, or effectively to recommend any of these actions, (b) to act on the grievances of other employees or effectively to recommend action on grievances, or (c) to direct the plaintiff's daily work activities. CACI 2525.

Defense to Sexual Harassment by a Supervisor (Avoidable Consequences Doctrine): An employer will have a defense for sexual harassment by its supervisor to the extent the employee could have reasonably avoided some (or all) of the harm. The employer must prove that (1) the employer took reasonable steps to prevent and correct workplace sexual harassment, (2) the plaintiff unreasonably failed to use the preventive and corrective measures for sexual harassment that the employer provided, and (3) the reasonable use of the employer's procedures would have prevented some or all of the harm. A jury must consider a plaintiff's ability to report the conduct without facing undue risk, expense or humiliation. CACI 2526.