

10.9 “Hostile Work Environment” Defined

In determining whether the plaintiff [name] was subjected to a [sexually] [racially] [other protected category] hostile work environment, you should consider three factors:

> (1) whether the plaintiff [name] was subjected to verbal or physical conduct [of a sexual nature], or to verbal or physical conduct evincing hostility on the basis of [race] [other protected category];

> (2) whether the conduct was unwelcome; and

> (3) whether the conduct was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.

The third factor requires the plaintiff to show that the work environment was both subjectively and objectively hostile. In analyzing the objective hostility of a working environment, you should look to the totality of the circumstances surrounding the plaintiff’s claim. That includes assessing the frequency of the discriminatory conduct; its severity; whether it was physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interfered with an employee’s work performance. In considering the totality of the circumstances, “[n]o single factor in this non-exhaustive list is required.” You should also consider that the required level of severity or seriousness varies inversely with the pervasiveness or frequency of the conduct and the cumulative effect of conduct over time. In all cases, simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not trigger Title VII’s protections.

[In addition, conduct that took place outside of the physical work environment is part of the totality of the circumstances that you may evaluate when considering a hostile work environment claim.]

Comment

This instruction is based on the law of a sexually hostile work environment as explained in *Okonowsky v. Garland*, 109 F.4th 1166 (9th Cir. 2024).

For an analogous instruction regarding the subjective element or plaintiff’s perception, see Instruction 10.6 (Civil Rights—Title VII—Hostile Work Environment—Harassment Because of Protected Characteristics—Elements).