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Religious Harassment Under Title VII

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Introduction

In October of 1993, the Equal Employment Opportunity Commission published in the Federal Register the Proposed Guidelines on Harassment Based on Race, Color, Religion, Gender, National Origin, Age, or Disability [1]. By the close of the extended comment period on June of 1994, the EEOC had received over 100,000 mostly negative letters. [2] The United States Senate drafted a resolution that was passed 94-0 stating the Proposed Guidelines on Harassment should be modified to reflect that "expressions of religious belief consistent with the First Amendment and the Religious Freedom Restoration Act are not to be restricted and do not constitute proof of harassment." [3] In addition, the House of Representatives drafted a resolution against the implementation of the proposed guidelines. The Resolution passed 366 to 37 and prevented the EEOC from using any budgeted funds to enforce the proposed guidelines if promulgated. [4]

What seemed to be the prevailing perspective concerning harassment drew great disagreement from tens of thousands of Americans and an overwhelming majority of Congress. The EEOC on October 11, 1994, issued a withdrawal of the proposed guidelines on the grounds that they failed to consolidate, clarify and explicate existing harassment law. [5] Despite the EEOC's attempt to consolidate guidelines concerning harassment, Congress strongly suggested that religion cannot be lumped in with race, color, gender, national origin, age, or disability when it comes to the topic of harassment.

Although the EEOC's guidelines concerning religious harassment were withdrawn, the courts have consistently recognized harassment based upon religion as a violation of Title VII. The U. S. Supreme Court in the 1986 case of *Meritor Savings Bank v. Vinson* [6] opened the door to religious harassment litigation under Title VII. The courts have followed the lead of the high court and created a body of religious harassment case law, with most federal circuits recognizing a claim of religious harassment under Title VII. In many such cases, the courts have allowed litigants to sue under Title VII, utilizing the same elements set forth in the proposed guidelines. First, this article will discuss the EEOC proposed guidelines and the comments that were made during the public hearings. Second this article will analyze the two Supreme Court cases that have allowed the federal courts to create a body of precedent on religious harassment. Third this article will discuss some of the lower federal court decisions involving religious harassment. Finally this article will assert the conclusion that present federal case law concerning religious harassment is substantially similar to the EEOC guidelines.

The Proposed Guidelines

The EEOC determined that guidelines on harassment were necessary to clarify

[1] 58 Fed. Reg. 51266, Oct. 1, 1993.

[2] J. Waks, Proposed EEOC Guidelines On "Religious Harassment" Provoked A Firestorm of Criticism, Causing The Agency To Pull Back - For Now. N. L. J. B5, B6, Sept. 12, 1994.

[3] Cong. Rec., June 16,1994, S7028-7029.

[4] Cong. Rec., June 27,1994, H5164-5165.

[5] 59 Fed. Reg. 51396, Oct. 11,1994.

[6] 477 U.S. 57, (1986).

that harassment based upon any of the protected classes is a violation of Title VII. [7] The Commission cites five reasons for the proposed guidelines. The first reason cited is that it would be useful to have "consistent and consolidated guidelines" concerning various statutes. The Commission suggests that an inconsistency exists among harassment prohibitions under the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Rehabilitation Act, and Title VII.

The second reason cited is that, due to the recent attention given to sexual harassment, the Commission deems it necessary to emphasize that harassment based upon any of the protected classes is illegal. Third, the Commission states that the guidelines provide more detailed information than previous national origin guidelines. Fourth, the Commission cites the need to further clarify sexual harassment guidelines.

The major provision of the proposed guidelines is Section 1609.1, which prohibits harassment on the basis of race, color, religion, gender, national origin, age, or disability. The harassment must relate to the terms, conditions, and privileges of employment. The inclusion of age, disability, national origin, and sex provide a comprehensive set of guidelines and is applicable to the ADEA, ADA, the Rehabilitation Act, and Title VII.

The Commission defines harassment as "verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, disability, or that of his/her relatives, friends, or associates and that (i) has the purpose or effect of creating an intimidating, hostile, or offensive work environment, (ii) has the purpose or effect of unreasonably interfering with an individual's work performance, or (iii) otherwise adversely affects an individual's employment opportunities." [8] The following provision provides specific examples of prohibited conduct. Harassing conduct includes epithets, slurs, negative stereotyping, hostile acts, and written or graphic material that denigrates. The Commission further defined a hostile or abusive work environment as one in which a reasonable person in the same or similar circumstances would find the conduct intimidating, hostile, or abusive. The "reasonable person" standard includes consideration of the perspective of persons of the alleged victim's race, color, religion, gender, national origin, age, or disability. It is not necessary to make additional showing of psychological harm. [9]

Proposed guideline Section 1609.2 stated that the employer is liable for harassment. [10] An employer has liability for the conduct of its agents and supervisors where the employer knew or should have known and failed to take immediate action and where the supervisory employee is acting in an "agency capacity." The employer may also be liable for the conduct of co-workers and nonemployees if the employer knew or should have known and failed to take immediate action.

The Senate Hearings

On June 9, 1994, the Subcommittee on the Courts and Administrative Practice of the Committee on the Judiciary of the U.S. Senate held hearings on the proposed guidelines. [11] Proponents and critics of the proposed guidelines testified during the hearings. Many testified that employers may interpret the guidelines as mandat-

[7] See 58 Fed Reg. 51267.

[8] Id. At 51268.

[9] Id. at 51269.

[10] Id.

[11] The Subcommittee on Courts and Administrative Practice held hearings on June 9,1994. The Subcommittee heard from outside experts and employees of the EEOC concerning religious harassment. 103rd Cong., 1st Sess. (June 9.1994).

ing a workplace free of religious speech, objects and practice. [12] Although, acting counsel for the EEOC testified that the proposed guidelines were drafted to explain and interpret existing law and not intended to suppress religious expression. In addition, the EEOC stated that the guidelines were carefully written based upon decades of judicial and Commission precedent.

Opponents to the proposed guidelines asked the EEOC to either drop religion from the guidelines or rewrite the guidelines entirely. Each critic argued that the overall effect of promulgating the guidelines would be a chilling of constitutionally protected religious expression in the workplace. The notion was that employers would attempt to follow the guidelines by creating workplaces that were entirely free of religion. In addition, some critics argued that the guidelines were vague and overly broad such as to violate the Religious Freedoms Restoration Act. [13] RFRA requires that the least restrictive means be utilized when free exercise of religion is involved. The concern was that harassment could be defined under the guidelines as affirmative expressions of religion. In addition, religious pieces of clothing or religious objects could be considered as creating a hostile workplace.

Opponents of the guidelines stated that the right to religious expression is protected by the first amendment to the U.S. Constitution. The free exercise of religion is a right that is deeply rooted in the heritage of the United States and highly prized by employers and employees alike. The essence of the free exercise clause is the freedom to proclaim one's religious beliefs. Religious individuals become committed to a set of strongly held beliefs. A person's religious beliefs usually pervade every aspect of his or her life. Many religions believe in proselytizing their religion to others. Since employees spend large amounts of time in the workplace and may engage in social activities with coworkers, the chance for religious conversation is great.

Supreme Court Harassment Cases

The seminal case of *Meritor Savings Bank v. Vinson* [14] was decided in 1986 by the Supreme Court. In *Meritor*, a female bank employee brought a sexual harassment cause of action against the bank and her supervisor. Michelle Vinson was a teller at the Meritor Savings Bank for four years before she was discharged for excessive use of sick leave. Vinson sued the bank for sexual harassment claiming her supervisor subjected her to demands for sexual favors, fondled her in front of other employees, and even forcibly raped her. The bank and the supervisor denied all the charges. The district court held for the bank, finding the relationship between Vinson and her supervisor was voluntary. [15] The Court of Appeals reversed and remanded the case, holding that the discrimination was of the hostile environment type. [16] The U. S. Supreme Court affirmed in part the decision of the appeals court and remanded.

Justice Rehnquist delivered the opinion of the court relying extensively on the EEOC guidelines on sexual harassment, legislative history, and lower court precedent. The court validated the "hostile environment" sexual harassment claim as actionable under Title VII. In addition the court set out the parameters of a sexual harassment case. For sexual harassment to be actionable, it must be sufficiently severe or pervasive "to alter the conditions of (the victim's) employment

[12] Id. Representative McKeon (CA) testified with others that the EEOC Guidelines went beyond Supreme Court rulings and would infringe on religious liberty.

[13] Congress passed RFRA in 1993 to overturn the Supreme Court's ruling in Employment Division v. Smith, 494 U.S. 872 (1990) which eliminated the compelling interest test when government burdens religious freedoms. 42 U.S.C. Section 2000b(Supp. V. 1993)

[14] See note 6.

[15] *Vinson v. Taylor* 23 FEP Cases 37 (DC 1980).

[16] 753 F. 2d. 141 (1985).

and create an abusive working environment." [17]

The court stated that the principle of harassment has been applied to race, national origin, and religion. Adding that Title VII allows a hostile environment claim based upon race, national origin, and religion and should likewise prohibit sexual harassment. The court held that whether or not the sexual advances are voluntary is not the appropriate standard but the issue is whether the advances are "unwelcome." [18] In addition, the court refused to apply a strict liability standard concerning employer liability but instead mandated general principles of agency law.

The court summed up its holding on harassment by the following: In concluding that so-called "hostile environment" (i.e., non quid pro quo) harassment violates Title VII, the EEOC drew upon a substantial body of judicial decisions and EEOC precedent holding that Title VII affords employees the right to work in an environment free from discriminatory intimidation, ridicule, and insult. [19]

A more recent Supreme Court case involving the hostile environment is *Harris v. Forklift Systems* [20] decided in November of 1993. Teresa Harris worked as a manager at Forklift Systems for approximately two and one half years. Harris alleged that the president of the company consistently made comments of a sexual nature to her and other employees. In addition, Harris alleged that the president suggested they go to the Holiday Inn to negotiate her raise. Harris, after repeated incidents, collected her paycheck and quit. Harris sued Forklift, claiming the conduct of the president created an abusive work environment. The district court found no violation of Title VII because the conduct was not severe enough to affect the psychological well-being of Harris. [21] The Court of Appeals affirmed the district court and the Supreme Court granted writ of certiorari. [22]

Justice O'Connor, writing for the majority, reversed the decision of the Court of Appeals and remanded to the district court. The Court affirmed the principles of *Meritor* and further clarified the definition of hostile environment. The Court stated that Title VII prohibits conduct that affects a reasonable person's psychological well-being, but the statute is not limited to such conduct. Justice O'Connor set forth the standard for determining if the workplace is discriminatory hostile: "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find ostile or abusive—is beyond Title VII's purview. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." [23]

The Court required the hostile environment to be objectively and subjectively hostile or abusive for a violation to occur. The Court further defined the nature of abusive conduct by providing some criteria. Justice O'Connor stated the following criteria for deciding if the workplace is hostile or abusive: "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." [24]

Justice Scalia, although concurring in the decision, disagreed with the majority

[17] 47 U.S. at 67.

[18] Id. The high court disagreed with the district court on the issue of voluntary. The Supreme Court defined voluntary in the sense of "not be forced to participate."

[19] Id.

[20] 114 S.Ct. 367 (1993).

[21] The U. S. District Court dismissed the action pursuant to a report and recommendation of the U.S. Magistrate Judge.

[22] 976 F. 2d 733 (CA6 1992).

[23] 114 S. Ct. at 370.

[24] Id. at 371.

on the issue of objectivity. [25] Justice Scalia does not believe that the reasonable person standard will assist in clarifying the definition of "hostile."

Federal Lower Court Decisions

The federal courts have followed the lead of the EEOC on the issue of religious harassment. The majority of the cases involve an employee being denigrated by speech which has a religious nature. One of the earliest cases involving religious harassment was *Compston v. Borden, Inc.* [26] decided in 1976. Rodney Compston worked as millwright in the maintenance department of the Columbus, Ohio, plant of Borden, Inc. Compston's supervisor was Ed Evans for the two-year period of Compston's employment. Compston alleged that Evans directed a barrage of verbal abuse toward him due to his Jewish ancestry and faith. Compston casually mentioned to Evans in the shop that he believed the basic tenants of Judaism. Subsequently Evans began to treat Compston differently using names such as, "the Jew boy, the kike," and "the damn Jew" in front of other employees.

In addition, Evans' attitude toward Compston's work changed at the same time. Compston was discharged for failing to follow company rules in October of 1974. The defendants cited *Corne v. Bausch and Lomb, Inc.*, [27] for the proposition that a supervisor and the company cannot be held liable for patterned, discriminatory harassment and verbal abuse of employees.

The court refused to follow the decision of *Corne* and instead stated "When a person vested with managerial responsibilities embarks upon a course of conduct calculated to demean an employee before his fellows because of the employee's professed religious views, such activity will necessarily have the effect of altering the conditions of his employment." [28]

The defendants attempted to prove that Compston was using religion as a facade to cover up his unsatisfactory performance. The court pointed to the record, which indicated the opposite was true. Evans considered Compston's performance satisfactory until he found out that Compston was Jewish. The court concluded that the defendants discriminated against Compston concerning the conditions of his employment because of his religion. Despite the court failing to define the supervisor's conduct as creating a "hostile environment" a violation of Title VII was found. [29]

In the second case, *Weiss v. United States* [30], Wallace Weiss was employed by the Defense Logistics Agency as research analyst from 1980 to 1983. Weiss alleged that from the beginning of his employment until March of 1982, he was the constant target of highly offensive religious slurs. Weiss stated during the trial that a co-worker and his supervisor verbally abused him due to his religious beliefs. Some examples of the names which the defendants called the plaintiff were, "resident Jew, Jew faggot," and "rich Jew."

Weiss' supervisor, Dennis Zimmerman, did not know he was Jewish at the time he was hired. Weiss told Zimmerman he was Jewish after he was hired, making him the only Jewish employee in the office. Zimmerman never attempted to stop the anti-Semitic remarks of co-workers. Weiss testified that the religious epithets caused him to develop stress and anxiety-related disorders. Weiss, prior to the verbal abuse,

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[25] Id. At 371,372. Justice Scalia in his concurring opinion states that the "abusive" language is vague and that adding "objectivity" to it fails to provide clarity.

[26] 424 F. Supp. 157, (S.D. Ohio, E.D. 1976).

[27] 390 F. Supp. 161, (D. Ariz. 1975) The court declined to follow the decision of Corne holding that the conditions of employment were altered.

[28] 424 F. Supp. at 160,161.

[29] Id. At 163.

[30] 595 F. Supp. 1050, (1984).

received high performance evaluations and generally performed his duties to his supervisor's satisfaction.

In March of 1982, Weiss and co-worker Pouy had a confrontation during a branch meeting. Pouy called Weiss a highly derogatory name during the meeting. At that time, Zimmerman asked Pouy to apologize which he did. Weiss complained to Zimmerman's supervisor about the anti-Semitic comments of Pouy and Zimmerman. Zimmerman subsequently criticized and demeaned Weiss for his work in front of other employees, revoked prior authorization to present a paper at a symposium, gave Weiss lower performance appraisals, and assigned Weiss to inappropriate and unreasonably difficult work projects. Weiss was terminated for failing to perform his duties. The agency failed to discipline Zimmerman and refused to transfer Weiss to another branch.

The court recognized religious harassment as actionable under Title VII. "Religious harassment, like sexual harassment, can take many forms, but there are two basic varieties: harassment that creates an intimidating, offensive environment (condition of work), and quid pro quo harassment, in which a supervisor demands that an employee alter or renounce some religious belief in exchange for job benefits." [31]

The court stated that a mere offensive epithet by a co-worker or supervisor would not be a violation of Title VII. In addition, the court discussed the criteria used in determining whether or not the employer is held liable for the actions of supervisors and co-workers. [32] The court reaffirmed basic agency rules on the vicarious liability issue. "Where the employer's supervisory personnel acquiesced and participated in such harassment, the burden on the employer seeking to avoid Title VII liability is especially heavy." [33] The court held the employer discriminated against Weiss in violation of Title VII concerning the conditions of his employment.

The third lower court case is *Shapiro v. Holiday Inns, Inc.*, [34] decided in 1990. In *Shapiro*, the plaintiff, Inga Shapiro, was hired by Holiday Inn as a waitress. Shapiro alleged that she was terminated after four years of employment because her supervisor was anti-Semitic. Shapiro cites several incidents in which derogatory comments were made with respect to her religion. She alleged that the janitor made repeated comments such as "turn on the ovens" and "here comes the Jew." Shapiro contends that her supervisor never attempted to take any action against the janitor. In addition, Shapiro was told not to wear her star of David on the outside of her uniform and that the supervisor grumbled when Shapiro asked to take off religious holidays.

The court reviewed the case law concerning religious harassment and concluded a violation did not occur. The court looked to *Compston* and *Meritor* for guidance and decided that the comments of the supervisor and the janitor were not pervasive enough to constitute harassment. Although *Meritor* was a sexual harassment case, the court cited with explicit approval the seminal lower court case which applied the same principle to harassment based on the religious discrimination. "Hence, the question becomes did the demeaning conduct. . . cause such anxiety and debilitation to the plaintiff that the working conditions were poisoned within the meaning of Title VII." [35]

The court decided that the comments of the supervisor and janitor were sporadic at best and therefore did not poison the plaintiff's working environment. [36]

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[31] Id. at 1056.

[32] Id. at 1057.

[33] Id.

[34] 1990 WL 44472 (N.D. Ill.)

[35] Id. at 44472 *9.

[36] Id. at 44472 *10.

The fourth lower court case is *Turner v. Barr,*[37] decided in 1992. Robert Turner worked for the Immigration and Naturalization Service as a special investigator. In 1988 he became an inspector in the Witness Security Division at the Washington Metro Office of the United States Marshals Service. In 1989 Turner was transferred to the District of Columbia Superior Court, District of the Marshals Office. Turner alleged that he was denied opportunities to advance in the agency concerning training in languages and law enforcement. Turner is Jewish and as an employee working for the Marshal's Office was subjected to discrimination based upon his religion. A supervisor related jokes about the Holocaust in front of other employees. In addition, co-workers made comments such as being a jeweler was something for Jews. The district court concluded that the conduct of supervisors and co-workers clearly demonstrated that Turner had been subjected to religious harassment.[38]

The court used the "totality of the circumstances" standard to come to the conclusion that Title VII had been violated.[39] The court cited the Fifth Circuit case of *Rogers v. EEOC*[40] as the first federal circuit case to recognize the concept of the hostile work environment and as being upheld by the U.S. Supreme court in *Meritor.* The court stated the principle found in many harassment cases that an employee has "the right to work in an environment free from discriminatory intimidation, ridicule, and insult."[41] The court commented that harassment poisons the work environment.

The court stated the following standard determining if a workplace has become sufficiently hostile: "All that needs to be established is that the alleged conduct be unreasonably abusive or offensive in the workplace environment or adversely affected the reasonable employee's ability to function in his or her job."[42] the court concluded the agency employees had created a sufficiently pervasive hostile or offensive work environment. In addition, the court decided the harassment was of a continuous nature, ignored by management in violation of Title VII.

The fifth case, *Goldberg v. City of Philadelphia,*[43] involved Mark Goldberg who was employed by the City of Philadelphia as a police officer. Goldberg claimed he was continually harassed on the job because of his Jewish faith. In 1985 Goldberg was transferred from the thirty-fifth district to the Organized Crime/Intelligence Unit. Goldberg alleged that he was subjected to physical and verbal harassment as a result of his religion. Sergeant Coughlin choked Goldberg around the neck for several seconds on December 10, 1989. In addition, Sergeant Coughlin made several derogatory comments to Goldberg such as, "the bagel f—ing Jew, and "you jews are always worrying about taking care of the niggers—you should donate them to the Saint Benedictine." Goldberg complained about Coughlin and was transferred to another part of the Organized Crime Unit. Goldberg alleged the harassment continued from Sergeant Weaver and other employees. Goldberg resigned from the police force approximately four months after being transferred due to sickness which he stated was caused by the harassment.

The court considered the hostile environment claim as according to *Meritor* and *Harris.* The court listed the five elements necessary to establish the existence of a hostile environment: (1) the employee suffered intentional discrimination because of his religion; (2) the discrimination was pervasive and regular; (3) the

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[37] 811 F. Supp 1 (1993).

[38] Id. at *5.

[39] Id. at *4

[40] 454 F. 2d. 234 (5th Cir. 1971).

[41] See 806 F. Supp. at 1027 (1992).

[42] Id.

[43] 1994 WL 313030 (E.D. Pa.).

discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same religion in that position; and (5) the existence of respondeat superior liability. [44] The court concluded that the repeated incidents in the record were sufficient to establish a prima facie case against the defendants. The court went on to state that the frequency and the gravity of the harassment would have detrimentally affected a reasonable Jewish person.

Analysis of Proposed Guidelines and Case Law

Analyzing the case law alongside the proposed guidelines suggests the EEOC drafted the guidelines with case law in mind. Although, in some instances the guidelines depart from case law substantially. It seems that these departures were a cause of the outpouring of public concern when the guidelines were first proposed [45]. The lower federal courts consistently cite *Meritor* and *Harris* as the benchmark for their decisions. [46] The courts have not show any hesitancy in applying sexual harassment case law to religious harassment fact patterns. The EEOC guidelines were drafted broadly as to cover all aspects of harassment. [47]

A.Sections in Accordance with Case Law

Proposed guideline Section 1609.1 (c) stated that conduct must be sufficiently "severe" or "pervasive" to create a hostile or abusive work environment. [48] The language describes a work atmosphere experienced by a victim and created by the employer or co-workers. A plaintiff must prove the workplace was permeated with harassing conduct in order to survive a motion to dismiss. Both in *Meritor* and *Harris* the Supreme Court stated that a hostile or abusive work environment is one where the conduct is severe or pervasive.

As according to *Harris*, the workplace must be sufficiently severe or pervasive to alter the conditions of the victim's employment. Justice Rehnquist in *Meritor* states that the discriminatory intimidation, ridicule, and insult can create a work environment sufficiently severe or pervasive that a Title VII violation has occurred. [49] The guidelines Section 1609.1 (b)(1)(i) instead uses the words, "intimidating, hostile and offensive." In Harris the court discusses the abusive work environment, considering if the conduct is "offensive" and "hostile." The EEOC's has substantially followed case law when it inserted the severe and pervasive standard.

In proposed guideline Section 1609.1 (c), the EEOC further clarifies the meaning of severe and pervasive by adding the "reasonable person" standard. [50] The guideline indicates that a hostile environment is where a reasonable person in the same or similar circumstances would find the alleged conduct intimidating, hostile, or abusive. The same language is utilized by Justice O'Connor in *Harris*. Justice O'Connor stated that conduct which a reasonable person would not find hostile or abusive is beyond the purview of Title VII. [51] The reasonable person standard includes a consideration of the victim's religion under the guidelines as it does under case law.

B. Sections Outside the Case Law

The guidelines make a major departure from case law on the issue of" subjec-

[44] Id. at *10.

[45] See David L. Gregory, *Religious Harassment In The Workplace: An Analysis Of The EEOC's Proposed Guidelines*, 56 Montana L. Rev. 119,132-138 (1995).

[46] Both the courts of appeals and the district courts refer to *Meritor* and *Harris* for guidance on harassment issues. Each case in this article cited either *Meritor* or *Harris* as authority.

[47] See Note 7.

[48] See Note 9.

[49] 477 U.S. at 67.

[50] See Note 9.

[51] 114 S. Ct. at 370.

tively" creating a hostile or abusive work environment. The guidelines do not require that an employee actually perceive the environment to be abusive. Section 1609.1 (b)(1) of the guidelines state that conduct that has the "purpose or effect"of creating a hostile environment is in violation. [52] The guidelines indicate that either an intentional act or an unintentional act could violate Title VII as long as it created a sufficiently severe or pervasive abusive work environment. In *Harris*, Justice O'Connor mandates that the victim of the harassment must subjectively perceive the environment as abusive to be within the parameters of a prima facie case. Justice O'Connor requires that the environment be both objectively and subjectively abusive in order to alter the conditions of employment. [53] The guidelines would make it less difficult for the plaintiff to prove a prima facie case because he or she would not have to prove they internally experienced the harassing conduct. In addition, the guidelines were drafted with language not found in case law. In Section 1609.1(b)(1) the EEOC inserted the words "denigrate" and "aversion." [54] The cases have not used either word to explain physical or verbal harassing conduct. Although, some of the lower court cases describe conduct as being" demeaning" which would have a meaning consistent with the word denigrate.

Finally, the guidelines depart from the established case law by stating that the harassing conduct can be against the employee or "his/her relatives, friends, or associates." [55] The proposed guidelines allow a violation based upon conduct which is directed at the employee concerning relatives, friends or associates. This language and expansion of Title VII liability is not found in case law.

Conclusion

The EEOC Proposed Guidelines on Harassment did not become part of the Code of Federal Regulation due to immense pressure from various groups concerned about religious freedom. The EEOC has not attempted to modify the guidelines since withdrawing them. The EEOC maintained that it drafted the guidelines in accordance with already existing law.

According to the U.S. Supreme Court, religious harassment is actionable under Title VII. The lower courts have followed the lead of the high court by shaping a body of precedent on religious harassment. The majority of lower court cases utilize the terminology of the EEOC Guidelines and the Supreme court cases of *Meritor* and *Harris*. The courts consistently describe religious harassment as conduct which creates an intimidating, hostile, abusive, or offensive workplace. The courts determine the workplace atmosphere from the perspective of the reasonable employee of a particular religion. The EEOC proposed guidelines fall in line with established case precedent concerning the harassment area. Some parts of the guidelines departed from case law and may have even expanded the reach of Title VII.

[The End]

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[52] See Note 8.

[53] 114 S. Ct. At 370.

[54] See Note 8.

[55] Id.