

When is harassment illegal?

Contrary to popular belief, it is not illegal for a supervisor to harass an employee simply because he or she doesn't like the employee's work or doesn't like the employee as an individual.

Harassment is illegal only if it is based on some protected characteristic of the employee, such as his or her age, race, national origin, sex, religion or disability.

In addition, harassment must be severe or pervasive in order to violate the law. Courts have held that the government cannot make American workplaces pristine, but may ensure only that they are not hostile and abusive to an employee because the employee is a member of a protected class. Therefore, isolated or occasional use of racial or ethnic slurs, or sporadic dirty jokes, while offensive, will not violate the law. On the other hand, one incident of harassment, if it is severe enough, may be enough to violate the law. An example might be a sexual assault or a beating by coworkers. Likewise, harassment which is continual or which pervades the work environment is actionable. Such behavior includes constant dirty jokes or comments, repeated unwelcome passes, anti-Semitic or racist comments, or a workplace decorated with pornographic posters. Finally, the harassing behavior must be offensive to the reasonable person and to the employee. Behavior which offends a highly sensitive employee, but which would not offend a reasonable person in the same situation, would not violate the law. Likewise, behavior that might offend a reasonable person, but that clearly did not offend the employee, will not create a right for damages. Some courts define a reasonable person as an average employee in same the protected category as the employee, for example, a reasonable female employee or a reasonable Hispanic employee; other courts consider the reaction of a generic reasonable person. In determining whether the employee was offended personally, a court or jury will consider whether the employee willingly participated in the conduct, and whether he or she used reasonably available avenues of complaint to protest the conduct.

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