

## “Is my Supervisor just a ‘Jerk’ or is it a Hostile Work Environment?”

**B**oth stewards and union representatives represent members in a wide variety of workplace matters based on the collective bargaining agreement.

As such, stewards and representatives are often called upon to “assist and provide guidance to members involved in difficult situations—such as a workplace that is perceived as “hostile.”

A person using the words “hostile work environment” is very clear about the behaviors they are experiencing. You may have heard adjectives like, “disrespectful,” “bullying,” “rude,” or “inappropriate.”

The knowledge you gain from reading this article will better equip you in assisting members, but it’s important to remember that as a steward, you are not an attorney. As a steward, you are not providing legal advice and you should encourage members who believe they are in a “hostile work environment” to seek legal counsel about specific questions and how the law applies to their specific situation.

You should encourage members to raise their concerns with their employer, if they have not already done so. Do whatever you can to assist and support them in any way, such as going with the member to the human resources department. The next thing to do is call your Local 17 Union Representative and let them know what’s going on!

### What a “hostile work environment” looks like:

Since it’s a legal concept there is, of course, a complicated legal definition. To make it simple, here are some key points:

- A “hostile work environment” is a form of discriminatory harassment.
- Discrimination is when a member of a protected category (such as age, race, ethnicity, religion, disability, gender, and sexual preference) is treated differently because of his/her membership in that protected category.

So, simply put, a “hostile work environment” exists when a member of a protected category is subjected to unwelcome and offensive behavior in the workplace based upon his/her membership in a protected category. Since “hostile work environment” has a legal meaning, the



definition has been refined and shaped over time as the result of court decisions.

### Establishing Whether or Not it is Hostile

In the first case to recognize a discriminatory work environment, the Fifth Circuit Court of Appeals said “the phrase ‘terms, conditions or privileges of employment’... is an expansive concept... a working environment heavily charged with ethnic or racial discrimination... One can readily envision working environments so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers....”

In a subsequent case, a general test for establishing a “hostile work environment” was developed. This is the test that is still used by courts today. It states: “to establish a hostile work environment, plaintiffs... must show harassing behavior ‘sufficiently severe or pervasive to alter the condition of employment.’”

Over time, court cases have defined and clarified the meaning of “severe” and “pervasive.” Severe can be one act of egregious conduct or a known very intimidating act based on national origin, or any other protected category. Pervasive is meant to capture a pattern of repeated “unwelcome” and “offensive” conduct, either over several days or years.

Courts also look at all the circumstances involved, including the frequency and severity of the conduct, whether the conduct is physically threatening or humiliating, and whether it interferes with an employee’s work.

As you can see, the legal definition of a “hostile work environment” is very specific and may not cover a situation where a supervisor is just giving a worker a hard time.

In fact, the law does not prohibit a supervisor from yelling at an employee or from giving an employee negative performance feedback. As long as the supervisor’s conduct is based on legitimate job-related factors, and not on the employee’s protected status, it will not violate discrimination laws or constitute a “hostile work environment.”

However, yelling at employees or treating people in a disrespectful manner in the workplace likely violates the employer’s policies or personnel guidelines, and as such may be handled in the appropriate manner by the Union, such as a grievance. — *Janet Parks, Union Representative*