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Harris v. Forklift Sys.

Supreme Court of the United States

October 13, 1993, Argued ; November 9, 1993, Decided

No. 92-1168

Reporter

510 U.S. 17 *; 114 S. Ct. 367 **; 126 L. Ed. 2d 295 ***; 1993 U.S. LEXIS 7155 ****; 62 U.S.L.W. 4004; 63 Fair Empl. Prac. Cas. (BNA) 225; 62 Empl. Prac. Dec. (CCH) P42,623; 93 Cal. Daily Op. Service 8330; 93 Daily Journal DAR 14212; 7 Fla. L. Weekly Fed. S 655

TERESA HARRIS, PETITIONER v. FORKLIFT SYSTEMS, INC.

Prior History: [****1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Disposition: 976 F.2d 733, reversed and remanded.

Core Terms

abusive, psychological, work environment, conditions, hostile, well-being, harassment, offended, severe, discriminatory, employees, pervasive, gender, sex

Case Summary

Procedural Posture

The court granted certiorari to review a judgment from the United States Court of Appeals for the Sixth Circuit in order to resolve a conflict among the circuit courts of appeal concerning whether conduct had to seriously affect an employee's psychological well-being to be actionable as an abusive work environment under Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e-2(a)(1).

Overview

The court held that the district court erred when it relied on whether a manager's conduct seriously affected plaintiff worker's psychological well being or led her to suffer injury. The court held that while Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e-2(a)(1) barred conduct that would seriously affect a reasonable person's psychological well being, the statute was not limited to such conduct. The court held that as long as the environment would reasonably be perceived and was perceived as hostile or abusive, there was no need for it also to be psychologically injurious. The court found that psychological harm could be taken into account, but was not required by the statute.

Outcome

The court reversed the lower court's judgment and remanded the action for further proceedings consistent with its opinion.

LexisNexis® Headnotes

Labor & Employment

Law > Discrimination > Actionable Discrimination

Business & Corporate Compliance > ... > Protection of Rights > Federally Assisted Programs > Civil Rights Act of 1964

Labor & Employment Law > ... > Disparate Treatment > Employment Practices > General Overview

Labor & Employment Law > ... > Harassment > Sexual Harassment > Hostile Work Environment

[HNI](#) **Discrimination, Actionable Discrimination**

Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an employer to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. 42 U.S.C.S. § 2000e-2(a)(1). This language is not limited to "economic" or "tangible" discrimination. The phrase "terms, conditions, or privileges of employment" evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women in employment, which includes requiring people to work in a discriminatorily hostile or abusive environment.

Business & Corporate Compliance > ... > Protection of Rights > Federally Assisted Programs > Civil Rights Act of 1964

Labor & Employment Law > Discrimination > Title VII Discrimination > General Overview

[HN2](#) Governments, Civil Rights Act of 1964

When the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment, Title VII of the Civil Rights Act of 1964 is violated.

Business & Corporate Compliance > ... > Protection of Rights > Federally Assisted Programs > Civil Rights Act of 1964

Labor & Employment Law > Discrimination > Title VII Discrimination > General Overview

[HN3](#) Governments, Civil Rights Act of 1964

Mere utterance of an epithet which engenders offensive feelings in an employee, does not sufficiently affect the conditions of employment to implicate Title VII of the Civil Rights Act of 1964. 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 hostile 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.

Business & Corporate Compliance > ... > Protection of Rights > Federally Assisted Programs > Civil Rights Act of 1964

Labor & Employment Law > Discrimination > Title VII Discrimination > General Overview

[HN4](#) Governments, Civil Rights Act of 1964

So long as the environment would reasonably be perceived, and is perceived, as hostile or abusive, there is no need for it also to be psychologically injurious under Title VII of the Civil Rights Act of 1964.

Business & Corporate Compliance > ... > Protection of Rights > Federally Assisted Programs > Civil Rights Act of 1964

Labor & Employment Law > Discrimination > Title VII Discrimination > General Overview

[HN5](#) Governments, Civil Rights Act of 1964

Whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include 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. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required under Title VII of the Civil Rights Act of 1964.

Lawyers' Edition Display

Decision

Federal District Court held to have applied incorrect standards under Title VII of Civil Rights Act of 1964 in rejecting female worker's claim alleging abusive work environment because of gender.

Summary

One of the provisions of Title VII of the Civil Rights Act of 1964 (*42 USCS 2000e et seq.*) is *42 USCS 2000e-2(a)(1)*, which in pertinent part prohibits an employer from discriminating against an individual with respect to "terms, conditions, or privileges of employment," on the basis of race, color, religion, sex, or national origin. In *Meritor Savings Bank v Vinson (1986) 477 US 57, 91 L Ed 2d 49, 106 S Ct 2399*, which involved a sexual harassment claim asserted under Title VII, the United States Supreme Court held that pursuant to 2000e-2(a)(1), a plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment. A female worker who had quit a company filed suit against the company in the United States District Court for the Middle District of Tennessee and claimed that the conduct of the company's male president had created an abusive work environment for the worker because of her gender. A magistrate found that the president had often (1) insulted the worker because of her gender, and (2) made her the target of

unwanted sexual innuendos. The District Court, in adopting the magistrate's report and recommendation, found the case to be "close," but decided that the president's conduct had not created a hostile work environment, as the court expressed the view that while some of the president's comments had offended the worker and would offend a reasonable woman, (1) the comments had not been so severe as to be expected to affect seriously the worker's psychological well-being; and (2) the worker had not been subjectively so offended that she had suffered injury. The United States Court of Appeals for the Sixth Circuit affirmed in a brief unpublished opinion.

On certiorari, the Supreme Court reversed and remanded. In an opinion by O'Connor, J., expressing the unanimous view of the court, it was held that (1) pursuant to the 2000e-2(a)(1) prohibition, (a) when the workplace is permeated by discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive as to alter the conditions of a victim's employment and to create an abusive working environment, Title VII is violated, (b) this standard takes a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury, (c) so long as the environment would reasonably be perceived--and is perceived--as hostile or abusive, there is no need for the environment also to be psychologically injurious, and (d) whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances; (2) with respect to the case at hand, it was improper for the District Court to rely on whether the president's conduct had seriously affected the worker's psychological well-being or had led her to suffer injury, for such an inquiry might needlessly focus the factfinder's attention on concrete psychological harm; and (3) the District Court's application of these incorrect standards might well have influenced that court's ultimate conclusion.

Scalia, J., concurring, expressed the view that, with respect to sexual harassment that takes the form of a hostile work environment, he knew of no test more faithful to the inherently vague statutory language than the test that the Supreme Court adopted in the case at hand.

Ginsburg, J., concurring, expressed the view that (1) the Supreme Court's opinion was in harmony with the view that it generally suffices to prove that a reasonable person subjected to the discriminatory conduct would find that the harassment so altered working conditions as to make it more difficult to do the job; and (2) under the court's equal protection jurisprudence, it remains an open question as to whether classifications based on gender are inherently suspect.

Headnotes

CIVIL RIGHTS §7.7 > sex discrimination -- abusive work environment -- > Headnote:

[LEdHN\[1A\]](#)[↕] [1A] [LEdHN\[1B\]](#)[↕] [1B] [LEdHN\[1C\]](#)[↕] [1C]

In deciding, in a suit by a female worker against a company she quit, whether, for purposes of Title VII of the Civil Rights Act of 1964 (*42 USCS 2000e et seq.*), the conduct of the company's male president created an abusive work environment for the worker because of her gender, it is improper for a Federal District Court to rely on whether the president's conduct seriously affected the worker's psychological well-being or led her to suffer injury, for such an inquiry may needlessly focus the factfinder's attention on concrete psychological harm, an element that Title VII does not require; while Title VII bars conduct that would seriously affect a reasonable person's psychological well-being, the statute is not limited to such conduct.

CIVIL RIGHTS §7.6 > discrimination -- race, sex, or other bases -- abusive work environment -- > Headnote:

[LEdHN\[2A\]](#)[↕] [2A] [LEdHN\[2B\]](#)[↕] [2B] [LEdHN\[2C\]](#)[↕] [2C] [LEdHN\[2D\]](#)[↕] [2D]

Under Title VII of the Civil Rights Act of 1964 (*42 USCS 2000e et seq.*), the language in *42 USCS 2000e-2(a)(1)*-- which in pertinent part prohibits an employer from discriminating against an individual with respect to "terms, conditions, or privileges of employment," on the basis of race, color, religion, sex, or national origin--is not limited to "economic" or "tangible" discrimination and evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women in employment, which treatment includes requiring people to work in a discriminatorily hostile or abusive environment; when the workplace is permeated by discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive as to alter the conditions of a victim's employment and to create an abusive working environment, Title VII is violated; this standard takes a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury; the mere utterance of an epithet which engenders offensive feelings in an employee does not sufficiently affect the conditions of employment to implicate Title VII; conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment--an environment that a reasonable person that

would find hostile 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; Title VII comes into play, however, before the harassing conduct leads to a nervous breakdown, as (1) a discriminatorily abusive work environment, even one that does not seriously affect an employee's psychological well-being, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers, and (2) even without regard to these tangible effects, the very fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of their race, gender, religion, or national origin offends Title VII's broad rule of workplace equality; so long as the environment would reasonably be perceived--and is perceived--as hostile or abusive, there is no need for the environment also to be psychologically injurious; this is not, and by its nature cannot be, a mathematically precise test; whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances, which may include the frequency of the discriminatory conduct, its severity, whether the conduct is physically threatening or humiliating or a mere offensive utterance, and whether the conduct unreasonably interferes with an employee's work performance; the effect on an employee's psychological well-being is relevant to determining whether the employee actually found the environment abusive, but while psychological harm, like any other relevant factor, may be taken into account, no single factor is required.

APPEAL §1677 > reversal -- remand -- incorrect standards --

> Headnote:

[LEdHN\[3A\]](#) [3A] [LEdHN\[3B\]](#) [3B]

With respect to a Federal District Court's decision in a suit by a female worker against a company she quit--which decision is to the effect that, for purposes of Title VII of the Civil Rights Act of 1964 (*42 USCS 2000e et seq.*), the conduct of the company's male president did not create an abusive work environment for the worker because of her gender--the United States Supreme Court, on certiorari, will reverse a Federal Court of Appeals' judgment affirming the District Court's decision and will remand the case for further proceedings consistent with the Supreme Court's opinion, where the Supreme Court determines that the District Court's application of incorrect standards as to what constitutes an abusive work environment may well have influenced that court's ultimate conclusion, especially given that the District Court found this

to be a "close case."

Syllabus

Petitioner Harris sued her former employer, respondent Forklift Systems, Inc., claiming that the conduct of Forklift's president toward her constituted "abusive work environment" harassment because of her gender in violation of Title VII of the Civil Rights Act of 1964. Declaring this to be "a close case," the District Court found, among other things, that Forklift's president often insulted Harris because of her gender and often made her the target of unwanted sexual innuendos. However, the court concluded that the comments in question did not create an abusive environment because they were not "so severe as to . . . seriously [****2] affect [Harris'] psychological well-being" or lead her to "suffer injury." The Court of Appeals affirmed.

Held: To be actionable as "abusive work environment" harassment, conduct need not "seriously affect [an employee's] psychological well-being" or lead the plaintiff to "suffer injury." Pp. 21-23.

(a) The applicable standard, here reaffirmed, is stated in *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 91 L. Ed. 2d 49, 106 S. Ct. 2399: Title VII is violated when the workplace is permeated with discriminatory behavior that is sufficiently severe or pervasive to create a discriminatorily hostile or abusive working environment, *id.*, at 64, 67. This standard requires an objectively hostile or abusive environment -- one that a reasonable person would find hostile or abusive -- as well as the victim's subjective perception that the environment is abusive. Pp. 21-22.

(b) Whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances, which may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it [****3] unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is relevant in determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required. Pp. 22-23.

(c) Reversal and remand are required because the District Court's erroneous application of the incorrect legal standard may well have influenced its ultimate conclusion that the work environment was not intimidating or abusive to Harris, especially given that the court found this to be a "close case." P. 23.

Counsel: Irwin Venick argued the cause for petitioner. With him on the briefs were Robert Belton and Rebecca L. Brown.

Jeffrey P. Minear argued the cause for the United States et al. as amici curiae in support of petitioner. With him on the brief were Acting Solicitor General Bryson, Acting Assistant Attorney General Turner, Dennis J. Dimsey, Thomas E. Chandler, Donald R. Livingston, Gwendolyn Young Reams, and Carolyn L. Wheeler.

Stanley M. Chernau argued the cause for respondent. With him on the brief were Paul F. Mickey, Jr., Michael A. Carvin, and W. Eric Pilsk.*

Judges: O'CONNOR, J., delivered the opinion for a unanimous Court. SCALIA, J., post, p. 24, and GINSBURG, J., post, p. 25, filed concurring opinions.

Opinion by: O'CONNOR

Opinion

[*18] [***300] [**369] JUSTICE O'CONNOR delivered the opinion of the Court.

[LEdHN/1A](#)[↑] [1A] [LEdHN/2A](#)[↑] [2A] [LEdHN/3A](#)[↑] [3A] In this case we consider the definition of a discriminatorily "abusive work environment" (also known as a "hostile work [*19] environment") under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. § 2000e et seq. (1988 ed., Supp. III).

*Briefs of amici curiae urging reversal were filed for the American Civil Liberties Union et al. by Steven R. Shapiro, John A. Powell, and Lois C. Waldman; for Feminists for Free Expression by Cathy E. Crosson; for the NAACP Legal Defense and Educational Fund, Inc., et al. by Elaine R. Jones and Eric Schnapper; for the National Conference of Women's Bar Associations et al. by Edith Barnett; for the National Employment Lawyers Association by Margaret A. Harris, Katherine L. Butler, and William J. Smith; for the NOW Legal Defense and Education Fund et al. by Deborah A. Ellis, Sarah E. Burns, Richard F. Ziegler, and Shari Siegel; for the Southern States Police Benevolent Association et al. by J. Michael McGuinness; and for the Women's Legal Defense Fund et al. by Carolyn F. Corwin, Judith L. Lichtman, Donna R. Lenhoff, and Susan Deller Ross.

Robert E. Williams, Douglas S. McDowell, and Ann Elizabeth Reesman filed a brief for the Equal Employment Advisory Council as amicus curiae urging affirmance.

Briefs of amici curiae were filed for the American Psychological Association by Dort S. Bigg; and for the Employment Law Center et al. by Patricia A. Shiu.

I

Teresa Harris [****4] worked as a manager at Forklift Systems, Inc., an equipment rental company, from April 1985 until October 1987. Charles Hardy was Forklift's president.

The Magistrate found that, throughout Harris' time at Forklift, Hardy often insulted her because of her gender and often made her the target of unwanted sexual innuendos. Hardy told Harris on several occasions, in the presence of other employees, "You're a woman, what do you know" and "We need a man as the rental manager"; at least once, he told her she was "a dumb ass woman." App. to Pet. for Cert. A-13. Again in front of others, he suggested that the two of them "go to the Holiday Inn to negotiate [Harris'] raise." *Id.*, at A-14. Hardy occasionally asked Harris and other female employees to get coins from his front pants pocket. *Ibid.* He threw objects on the ground in front of Harris and other women, and asked them to pick the objects up. *Id.*, at A-14 to A-15. He made sexual innuendos about Harris' and other women's clothing. *Id.*, at A-15.

In mid-August 1987, Harris complained to Hardy about his conduct. Hardy said he was surprised that Harris was offended, claimed he was only joking, and apologized. *Id.*, at A-16. [****5] He also promised he would stop, and based on this assurance Harris stayed on the job. *Ibid.* But in early September, Hardy began anew: While Harris was arranging a deal with one of Forklift's customers, he asked her, again in front of other employees, "What did you do, promise the guy . . . some [sex] Saturday night?" *Id.*, at A-17. On October 1, Harris collected her paycheck and quit.

Harris then sued Forklift, claiming that Hardy's conduct had created an abusive work environment for her because of her gender. The United States District Court for the Middle District of Tennessee, adopting the report and recommendation [*20] of the Magistrate, found this to be "a close case," *id.*, at A-31, but held [***301] that Hardy's conduct did not create an abusive environment. The court found that some of Hardy's comments "offended [**370] [Harris], and would offend the reasonable woman," *id.*, at A-33, but that they were not

"so severe as to be expected to seriously affect [Harris'] psychological well-being. A reasonable woman manager under like circumstances would have been offended by Hardy, but his conduct would not have risen to the level of interfering with that person's work performance.

"Neither [****6] do I believe that [Harris] was subjectively so offended that she suffered injury Although Hardy may at times have genuinely offended [Harris], I do not believe that he created a working environment so poisoned as to be intimidating or abusive

to [Harris]." *Id.*, at A-34 to A-35.

In focusing on the employee's psychological well-being, the District Court was following Circuit precedent. See [Rabidue v. Osceola Refining Co.](#), 805 F.2d 611, 620 (CA6 1986), cert. denied, 481 U.S. 1041, 95 L. Ed. 2d 823, 107 S. Ct. 1983 (1987). The United States Court of Appeals for the Sixth Circuit affirmed in a brief unpublished decision. Judgt. order reported at 976 F.2d 733 (1992).

We granted certiorari, 507 U.S. 959 (1993), to resolve a conflict among the Circuits on whether conduct, to be actionable as "abusive work environment" harassment (no *quid pro quo* harassment issue is present here), must "seriously affect [an employee's] psychological well-being" or lead the plaintiff to "suffer injury." Compare [Rabidue](#) (requiring serious effect on psychological well-being); [Vance v. Southern Bell Telephone & Telegraph Co.](#), 863 F.2d 1503, 1510 (CA11 1989) (same); and [****7] [Downes v. FAA](#), 775 F.2d 288, 292 (CA Fed. 1985) (same), with [Ellison v. Brady](#), 924 F.2d 872, 877-878 (CA9 1991) (rejecting such a requirement).

[*21] II

[LEdHN2B](#)[↑] [2B][HNI](#)[↑] Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). As we made clear in [Meritor Savings Bank, FSB v. Vinson](#), 477 U.S. 57, 91 L. Ed. 2d 49, 106 S. Ct. 2399 (1986), this language "is not limited to 'economic' or 'tangible' discrimination. The phrase 'terms, conditions, or privileges of employment' evinces a congressional intent 'to strike at the entire spectrum of disparate treatment of men and women' in employment," which includes requiring people to work in a discriminatorily hostile or abusive environment. *Id.*, at 64, quoting [Los Angeles Dept. of Water and Power v. Manhart](#), 435 U.S. 702, 707, n.13, 55 L. Ed. 2d 657, 98 S. Ct. 1370 (1978) [****8] (some internal quotation marks omitted). [HN2](#)[↑] When the workplace is permeated with "discriminatory intimidation, ridicule, and insult," 477 U.S. at 65, that is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment," *id.*, at 67 (internal brackets and quotation marks omitted), Title VII is violated.

[****302] This standard, which we reaffirm today, takes a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury. As we pointed out in [Meritor](#), [HN3](#)[↑]

"mere utterance of an . . . epithet which engenders offensive feelings in a employee," *ibid.* (internal quotation marks omitted) does not sufficiently affect the conditions of employment to implicate Title VII. 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 hostile 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 [****9] the [*22] conditions of the victim's employment, and there is no Title VII violation.

But Title VII comes into play before the harassing conduct leads to a nervous breakdown. A discriminatorily abusive work [****371] environment, even one that does not seriously affect employees' psychological well-being, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers. Moreover, even without regard to these tangible effects, the very fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of their race, gender, religion, or national origin offends Title VII's broad rule of workplace equality. The appalling conduct alleged in [Meritor](#), and the reference in that case to environments "'so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers,'" *id.*, at 66, quoting [Rogers v. EEOC](#), 454 F.2d 234, 238 (CA5 1971), cert. denied, 406 U.S. 957, 32 L. Ed. 2d 343, 92 S. Ct. 2058 (1972), merely present some especially egregious examples of harassment. [****10] They do not mark the boundary of what is actionable.

[LEdHN1B](#)[↑] [1B][LEdHN2C](#)[↑] [2C]We therefore believe the District Court erred in relying on whether the conduct "seriously affected plaintiff's psychological well-being" or led her to "suffer injury." Such an inquiry may needlessly focus the factfinder's attention on concrete psychological harm, an element Title VII does not require. Certainly Title VII bars conduct that would seriously affect a reasonable person's psychological well-being, but the statute is not limited to such conduct. [HN4](#)[↑] So long as the environment would reasonably be perceived, and is perceived, as hostile or abusive, [Meritor, supra](#), at 67, there is no need for it also to be psychologically injurious.

[LEdHN2D](#)[↑] [2D]This is not, and by its nature cannot be, a mathematically precise test. We need not answer today all the potential [*23] questions it raises, nor specifically address the Equal Employment Opportunity Commission's new regulations on this subject, see [58 Fed. Reg. 51266](#)

(1993) (proposed 29 CFR §§ 1609.1, 1609.2); see also [29 CFR § 1604.11 \(1993\)](#). But we can say that [HNS](#) whether an environment [****11] is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include 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 [***303] with an employee's work performance. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required.

III

[LEdHN\[1C\]](#) [1C] [LEdHN\[3B\]](#) [3B] Forklift, while conceding that a requirement that the conduct seriously affect psychological well-being is unfounded, argues that the District Court nonetheless correctly applied the *Meritor* standard. We disagree. Though the District Court did conclude that the work environment was not "intimidating or abusive to [Harris]," App. to Pet. for Cert. A-35, it did so only after finding that the conduct was not "so severe as to be expected to seriously affect plaintiff's psychological well-being," *id.*, at A-34, and that Harris was not "subjectively so offended that she suffered injury," *ibid.* The District Court's application of these incorrect standards may well have influenced its ultimate conclusion, [****12] especially given that the court found this to be a "close case," *id.*, at A-31.

We therefore reverse the judgment of the Court of Appeals, and remand the case for further proceedings consistent with this opinion.

So ordered.

Concur by: SCALIA; GINSBURG

Concur

[*24] JUSTICE SCALIA, concurring.

[Meritor Savings Bank, FSB v. Vinson](#), 477 U.S. 57, 91 L. Ed. 2d 49, 106 S. Ct. 2399 (1986), held that Title VII prohibits sexual harassment that takes the form of a hostile work environment. The Court stated that sexual harassment is actionable if it is "sufficiently [**372] severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.'" *Id.*, at 67 (quoting [Henson v. Dundee](#), 682 F.2d 897, 904 (CA11 1982)). Today's opinion elaborates that the challenged conduct must be severe or

pervasive enough "to create an objectively hostile or abusive work environment -- an environment that a reasonable person would find hostile or abusive." *Ante*, at 21.

"Abusive" (or "hostile," which in this context I take to mean the same thing) does not seem to me a very clear standard -- and I do not think clarity is at all increased [****13] by adding the adverb "objectively" or by appealing to a "reasonable person[s]" notion of what the vague word means. Today's opinion does list a number of factors that contribute to abusiveness, see *ante*, at 23, but since it neither says how much of each is necessary (an impossible task) nor identifies any single factor as determinative, it thereby adds little certitude. As a practical matter, today's holding lets virtually unguided juries decide whether sex-related conduct engaged in (or permitted by) an employer is egregious enough to warrant an award of damages. One might say that what constitutes "negligence" (a traditional jury question) is not much more clear and certain than what constitutes "abusiveness." Perhaps so. But the class of plaintiffs seeking to recover for negligence is limited to those who have suffered harm, whereas under this statute "[***304] abusiveness" is to be the test of whether legal harm has been suffered, opening more expansive vistas of litigation.

Be that as it may, I know of no alternative to the course the Court today has taken. One of the factors mentioned in the Court's nonexhaustive list -- whether the conduct unreasonably [*25] interferes with an employee's [****14] work performance -- would, if it were made an absolute test, provide greater guidance to juries and employers. But I see no basis for such a limitation in the language of the statute. Accepting *Meritor's* interpretation of the term "conditions of employment" as the law, the test is not whether work has been impaired, but whether working conditions have been discriminatorily altered. I know of no test more faithful to the inherently vague statutory language than the one the Court today adopts. For these reasons, I join the opinion of the Court.

JUSTICE GINSBURG, concurring.

Today the Court reaffirms the holding of [Meritor Savings Bank, FSB v. Vinson](#), 477 U.S. 57, 66, 91 L. Ed. 2d 49, 106 S. Ct. 2399 (1986): "[A] plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment." The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed. See 42 U.S.C. § 2000e-2(a)(1) (declaring that it is unlawful to discriminate with respect to, *inter* [****15] *alia*, "terms" or "conditions" of employment). As the Equal

Employment Opportunity Commission emphasized, see Brief for United States and Equal Employment Opportunity Commission as *Amici Curiae* 9-14, the adjudicator's inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with the plaintiff's work performance. To show such interference, "the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment." [Davis v. Monsanto Chemical Co., 858 F.2d 345, 349 \(CA6 1988\)](#). It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to "make it more difficult to do the job." See *ibid.* *Davis* concerned race-based discrimination, but that difference [*26] does not alter the analysis; except in the rare case in which a bona fide occupational qualification is shown, see [Automobile Workers v. Johnson Controls, Inc., 499 U.S. 187, 200-207, 113 L. Ed. 2d 158, 111 S. Ct. 1196 \(1991\)](#) (construing 42 U.S.C. § 2000e-2(e)(1)), Title [****16] VII declares discriminatory practices based on race, gender, religion, or national origin equally unlawful. *

The Court's opinion, which I join, seems to me in harmony with the view expressed in this concurring statement.

References

[45B Am Jur 2d, Job Discrimination 950-958, 960-963, 968-986](#)

21 Federal Procedure, L Ed, Job Discrimination 50:244

12 Federal Procedural Forms, L Ed, Job Discrimination 45:127, 45:128

5A Am Jur Pl & Pr Forms [****17] (Rev), Civil Rights, Forms 114, 121, 122.1

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21 Am Jur Trials 1, Employment Discrimination Action Under Federal Civil Rights Acts; 33 Am Jur Trials 257, Sex Harassment in Employment

42 USCS 2000e et seq.

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L Ed Index, Job Discrimination; Sex and Sexual Matters; Sex Discrimination; Sexual Harassment

ALR Index, Equal Employment Opportunity; Sex Discrimination; Sexual Harassment

Annotation References:

Racial discrimination in labor and employment-- Supreme Court cases. [28 L Ed 2d 928](#).

Sex discrimination-- Supreme Court cases. [27 L Ed 2d 935](#).

When is work environment intimidating, hostile, or offensive, so as to constitute sexual harassment in violation of Title VII of Civil Rights Act of 1964, as amended (*42 USCS 2000e et seq.*). [78 ALR Fed 252](#).

Construction and application of [****18] provisions of Title VII of Civil Rights Act of 1964 (*42 USCS 2000e et seq.*) making sex discrimination in employment unlawful. [12 ALR Fed 15](#).

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*Indeed, even under the Court's equal protection jurisprudence, which requires "an exceedingly persuasive justification" for a gender-based classification, [Kirchberg v. Feenstra, 450 U.S. 455, 461, 67 L. Ed. 2d 428, 101 S. Ct. 1195 \(1981\)](#) (internal quotation marks omitted), it remains an open question whether "classifications based upon gender are inherently suspect." See [Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724, 73 L. Ed. 2d 1090, 102 S. Ct. 3331, and n.9 \(1982\)](#).