

***HARRIS v. FORKLIFT SYSTEMS, INC. 114 S. Ct. 367 (1993)***  
EMPLOYMENT LAW

Teresa Harris was employed as a rental manager by Forklift Systems, Inc. (“Forklift”) at its office in Nashville, Tennessee. Her immediate supervisor was Charles Hardy, the president of the company. During her tenure with the company, Hardy made sexually derogatory and demeaning remarks to Harris as well as to other female employees. When Harris eventually complained to Hardy about his comments, he apologized, said he was only joking, and promised that he would no longer make such remarks.

A few weeks later, however, Hardy resumed his offensive behavior, which included a remark that Harris used sex to land an account. Several weeks later, Harris quit.

Harris subsequently filed a lawsuit alleging that Forklift had violated Title VII of the Civil Rights Act of 1964 by, among other things, creating a sexually hostile working environment and that the environment was so bad that she was constructively discharged, i.e., forced to quit. A hearing was held before a federal magistrate who found that Hardy had indeed engaged in a continuing pattern of sex-based derogatory conduct.

The magistrate specifically found that, in the presence of other employees, Hardy said to Harris, “You’re a woman; what do you know,” and called Harris “a dumb ass woman.” Hardy also remarked that the company needed “a man as the rental manager” and suggested to Harris that they go to the Holiday Inn to negotiate her raise. The magistrate also found that Hardy made sexually suggestive comments about the clothing worn by Harris and other female employees and commented on aspects of their anatomy. The magistrate further found that Hardy asked Harris and other female employees to retrieve coins from his pants pocket and threw objects on the ground in front of female employees and asked them to pick up the objects, making comments about their clothing.

Having found that Hardy engaged in this conduct, the magistrate, nonetheless, concluded that it was not so severe as to create a hostile work environment. In reaching this result, the magistrate relied on the test set for by the Sixth Circuit in *Rabidue v. Osceola*, for determining when sexual harassment rises to the level of a hostile work environment.

The *Rabidue* court held that a hostile environment is created where the harassing conduct “would interfere with that hypothetical reasonable individual’s work performance and affect the psychological well-being of that reasonable person.” In applying this test to the facts of Harris’ case, the magistrate concluded that Hardy’s conduct would not have interfered with a reasonable person’s work performance and that Harris did not suffer any psychological injury as a result of Hardy’s harassment. Following *Rabidue*, the magistrate dismissed the hostile-environment sexual harassment claim.

The magistrate also concluded that, because Harris was not subjected to a hostile environment, she was not constructively discharged because of Hardy's actions. Accordingly, the magistrate dismissed Harris' constructive-discharge claim.

The U.S. District Court for the Middle District of Tennessee adopted the magistrate's report in an unpublished opinion, and the Sixth Circuit Court of Appeals affirmed. The Supreme Court granted Harris' petition for writ of certiorari to decide the question whether proof of psychological injury is a necessary element in a hostile-environment sexual harassment case.

The Supreme Court, in *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), recognized a cause of action under Title VII where sexual harassment creates a hostile environment when harassing conduct is sufficiently severe or pervasive to alter the conditions of the victim's employment.

In focusing on the issue of when harassing conduct is sufficiently severe to alter employment conditions, the lower courts have developed two tests: 1) did the conduct interfere with the plaintiff's work performance when viewed from the perspective of a reasonable employee in the plaintiff's position; and 2) did the conduct cause psychological injury to the plaintiff.

Mandating a requirement of proof in psychological injury could adversely affect plaintiffs in several ways. Whenever a court imposes an additional proof factor on a party, it makes the case that much more difficult for a party to win. This effect is exacerbated in sexual harassment cases, where studies have shown that only a small percentage of sexually harassing behavior is even reported to begin with.

Moreover, requiring proof of psychological injury could deter individuals from bringing valid harassment claims because of an unwillingness to portray themselves as mentally impaired. Furthermore, if there were a psychological-injury requirement, a plaintiff's mental condition would be a fact "in controversy," and the defendant, as a matter of course, would seek an order requiring the plaintiff to undergo a psychological examination as part of pre-trial discovery. Such a forced psychological examination, with the results available to defendant, would serve as an additional deterrent to plaintiffs in these cases.

In a closely watched case, a unanimous Court held that to show an "abusive work environment," harassment need not "seriously affect [an employee's] psychological well-being," or lead that employee to "suff[er] injury." Rather, Title VII of the Civil Rights Act of 1964 is violated when discriminatory behavior in the workplace created a working environment that would be objectively hostile and abusive to a reasonable person, as well as perceived as such by the victim of sexual harassment.

Writing for the Court, Justice O'Connor noted that the phrase in the law which forbids discrimination with regard to "terms, conditions, or privileges of employment" was intended to strike at the entire spectrum of disparate treatment of men and women in employment and included requiring people to work in a discriminatorily hostile or abusive environment. The standard of proof adopted by the Court, Justice O'Connor observed, takes a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury." Title VII would not be violated if the conduct was such that a

reasonable person would not find it hostile or abusive, nor would it be violated if the victim did not perceive the environment to be abusive. “But,” added Justice O’Conner, “Title VII comes into play before the harassing conduct leads to a nervous breakdown. A discriminatorily abusive work 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.”

Justice O’Conner then specified some of the elements that need to be examined in each case to help determine if the work environment is hostile or abusive: “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.” While psychological harm, like any other relevant factor, may be taken into account, “no single factor is required.”

Justice Ginsburg, in her first written opinion, concurred in the judgment. Her concurrence held that a worker claiming harassment would not have to prove a tangible decline in productivity, but only that the environment “so altered working conditions as to make it more difficult to do the job.”