How Does The 4th Circ. Define A Hostile Work Environment?

By **Kirsten Eriksson and Elisabeth Hall** (February 3, 2023)

Kirsten Eriksson

Elisabeth Hall

When requested to describe his test for obscenity, U.S. Supreme Court Justice Potter Stewart famously responded, "I know it when I see it."

Close to 60 years later, an examination of decisions from the U.S. Court of Appeals for the Fourth Circuit demonstrate that when it comes to finding whether a plaintiff has established the existence of a hostile work environment, the test may be largely the same.

In a recent case, Laurent-Workman v. Wormuth, the Fourth Circuit expanded its view of what a hostile work environment looks like and lowered the bar in terms of what a plaintiff must show to sufficiently allege a race-based hostile work environment claim under Title VII.

Laurent-Workman stands in sharp contrast to prior decisions from the Fourth Circuit and demonstrates that what constitutes a hostile work environment is a moving target that may defy any attempts at definition.

The legal standard for evaluating a hostile work environment claim under Title VII is well settled: A hostile work environment is created when harassment that's based on a protected characteristic is sufficiently severe or pervasive to create an objectively hostile or abusive work environment.[1]

In deciding whether conduct is severe or pervasive, courts must examine the totality of the circumstances, including, as laid out by the Supreme Court's 1993 ruling in Harris v. Forklift Systems Inc., "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."[2]

The inquiry is therefore a fact-intensive one, but an examination of past decisions in the Fourth Circuit compared to the ruling in Laurent-Workman shows significant inconsistency in how this standard has been applied.

Marie Laurent-Workman is an African American woman and former career civilian employee of the U.S. Army. Laurent-Workman alleged that during her three-year period of employment with the Army, she was subjected to a hostile work environment due to racially hostile conduct by a white co-worker, primarily in the form of derogatory comments, including that "Blacks cannot speak properly" and that the co-worker "cannot understand them."

In addition, she claimed that the co-worker made a reference on several occasions to "you people" when addressing Laurent-Workman and once "abruptly stood up in a violent fashion while doing so."

Finally, Laurent-Workman's supervisor on one occasion purportedly announced his belief that Black male athletes excel in sports because "the slave masters had bred the strongest slaves together." Laurent-Workman also expressed dissatisfaction with a number of

management decisions by her supervisor, including his alleged failure to address the conduct by the offending co-worker.

The U.S. District Court for the Eastern District of Virginia dismissed Laurent-Workman's complaint, finding, in pertinent part, that the purported conduct was too "sporadic" and neither severe nor related enough to her protected characteristics to state a Title VII race-based hostile work environment claim.

Laurent-Workman appealed. The Fourth Circuit, in a unanimous opinion in late November, vacated and remanded the district court's dismissal of Laurent-Workman's race-based hostile work environment claim.[3]

The appellate panel explained that "even though they do not depict daily misconduct, Laurent-Workman's allegations demonstrate a series of hateful workplace encounters that consistently targeted her racial identity."[4]

The analysis deviates significantly from prior Fourth Circuit precedent, some of which was cited by the Army in its appeal brief.

For example, in Hartsell v. Duplex Products Inc.,[5] the Fourth Circuit in 1997 upheld the lower court's grant of summary judgment in dismissing a hostile work environment claim by a plaintiff who alleged that she endured comments by co-workers during her three-month period of employment. The comments included:

- "We've made every female in this office cry like a baby. We will do the same to you";
- "Mini-van driving mommy";
- "Why don't you go home and fetch your husband's slippers like a good little wife."

A similar result was reached in Hopkins v. Baltimore Gas & Electric Co., in which the Fourth Circuit in 1996 upheld a grant of summary judgment in favor of a defendant employer.[6] In that case, the male plaintiff claimed that, over the course of seven years, his male supervisor had:

- Frequently entered the men's bathroom and stated, "Ah, alone at last";
- Wrote "Alternative" before the word "Lifestyles" on a piece of mail addressed to Hopkins;
- Occasionally asked Hopkins if he had gone on dates and whether he had sex with anyone;
- Attempted to kiss Hopkins in the receiving line at Hopkins' wedding;
- Positioned a magnifying glass above Hopkins' crotch and asked "Where is it?";
- Asked Hopkins, "On a scale of one to ten, how much do you like me?";

- Bumped into Hopkins and said "You only do that so you can touch me";
- Frequently complimented Hopkins' appearance.

The Fourth Circuit, in other words, has historically required fairly egregious conduct in order to find a hostile work environment.

For instance, in Spriggs v. Diamond Auto Glass, decided by the Fourth Circuit in 2001, the plaintiff alleged almost daily "incessant racial slurs, insults, and epithets," including the frequent use of the N-word by a supervisor who also called Black employees "monkeys."[7]

Similarly, in Okoli v. City of Baltimore, decided by the Fourth Circuit in 2011, the plaintiff alleged upward of 12 comments in just four months, including her supervisor propositioning her to have sex in a Jacuzzi, fondling her and forcibly kissing her.[8]

The allegations in Laurent-Workman certainly appear to be closer to the former line of cases than the latter when examined in light of the factors laid out in Harris Forklift.

With respect to the frequency of the conduct, Laurent-Workman purported approximately six racial comments over the course of three years. A hostile work environment was found in Spriggs, by contrast, when the conduct was almost daily, and in Okoli when there were 12 incidents in four months.

No hostile environment was found in Hartsell when the allegations involved six comments about the plaintiff's gender over a three-month period or in Hopkins, where there were many more incidents, but they occurred over a seven-year period, with gaps between incidents as long as a year.

When looking at the nature of the conduct, Laurent-Workman also appears more like cases where no hostile work environment was found.

In Spriggs, the plaintiff alleged the use of racial slurs and epithets, including the N-word and references to Black employees as "monkeys." In Okoli, the plaintiff purported more than verbal comments, including fondling and forcible kissing.

Hartsell, on the other hand, involved only verbal comments, albeit ones that were demeaning and conveyed animosity based on gender stereotypes.

In Hopkins, the plaintiff also alleged primarily verbal comments. While he also alleged that his supervisor intentionally bumped into him, tried to kiss him and positioned a magnifying glass over his crotch, the court found those actions to be "sexually neutral," or at most, ambiguous.

The allegations in Laurent-Workman involved verbal comments, none of which were racial slurs, but which clearly were derogatory and conveyed animosity based on racial stereotyping. The claims thus seem closer to those in Hartsell than any other case.

The final element involves an examination of the impact of the conduct on the plaintiff's work performance. This is the one element where Laurent-Workman's allegations are more aligned with the cases that found the existence of a hostile work environment.

Laurent-Workman claimed that her health began to suffer as a result of the harassment, which often left her in tears and exacerbated her migraines. She began looking for other employment, but alleged that her supervisor interfered with her attempts.

Similarly, in Spriggs, the plaintiff complained that he was "outraged" by the conduct and walked off the job, while in Okoli, the plaintiff ran out of work one day because she was so distraught and complained to individuals at many levels in an attempt to find some relief.

In contrast, the plaintiff in Hartsell did not complain about the conduct, and her husband testified that she did not seem emotionally upset about her job. In Hopkins, the plaintiff stayed in his job for seven years and once declined the company's offer to transfer him to a different position.

Based on the analysis of these elements, in many ways Laurent-Workman seems to be closer factually to Hartsell and other cases where no hostile work environment was found, particularly with respect to the more objective elements such as the frequency and severity of the conduct. Certainly, Laurent-Workman was not subject to conduct as egregious as in Spriggs or Okoli.

So why, then, was Laurent-Workman's claim allowed to proceed?

The decision may reflect changes in social norms, with the #MeToo and Black Lives Matter movements having raised awareness of the impact of sex and race discrimination. It may be that the court placed more emphasis on the final Harris Forklift element than on the others.

Indeed, the Fourth Circuit's characterization of the comments made to Laurent-Workman seem to reflect just such an awareness, finding them to constitute "a series of hateful workplace encounters that consistently targeted her racial identity."

Whatever the reason, there can be little doubt that the court's decision in Laurent-Workman broadens the pleading requirements for plaintiffs alleging Title VII harassment claims in the Fourth Circuit compared to prior cases.

While the Fourth Circuit has continued to express its intent to use the Harris Forklift elements and has not explicitly overruled or distinguished prior precedent, it appears that the court is now applying those standards differently.

Counsel should be aware of the apparent shift in how the court is viewing hostile work environment cases and be prepared in legal briefing to address the apparent disconnect between decisions.

Practitioners will need to search deeply for common threads to unite — or distinguish — different cases, and perhaps it would be wise to focus less on the number of incidents and more on the impact of those incidents on the plaintiff.

Kirsten Eriksson is a principal and co-leads the labor, employment, benefits and immigration practice group at Miles & Stockbridge PC.

Elisabeth Hall is a principal at the firm.

[1] Meritor Savings. Bank, FSB v. Vinson, 477 U.S. 57, 64–66 (1986).

[2] Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993).

[3] Laurent-Workman v. Wormuth, 54 F.4th 201 (2022) https://www.ca4.uscourts.gov/opinions/211766.p.pdf.

[4] Id. at 211.

[5] Hartsell v. Duplex Products, Inc., 123 F.3d 766 (4th Cir. 1997).

[6] Hopkins v. Baltimore Gas & Electric Company, 77 F.3d 745 (4th Cir. 1996).

[7] Spriggs v. Diamond Auto Glass, 242 F.3d 179, 182 (4th Cir. 2001).

[8] Okoli v. City of Baltimore, 648 F.3d 216 (4th Cir. 2011).