

Muslim employee who was allegedly told to remove that “rag” from her head gets new day in court

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A federal appellate court ruled yesterday that a Muslim employee of [Astoria Bank](#) who was allegedly subjected to a “steady barrage” of shameful racist and anti-Muslim statements should be allowed to present her hostile work environment claim to a jury. [Ahmed v Astoria Bank](#), No. 16-1389 (2d. Cir. May 9, 2017).

Among other things, a senior supervisor reportedly told the employee (Ahmed) to remove her hijab (a headscarf traditionally worn by Muslim women), which the supervisor referred to as a “rag.”

What is a “hostile work environment”?

To prove a hostile work environment claim, an employee must show that the underlying acts were severe or pervasive. A single act of severe harassment, such as a sexual assault, is actionable under Title VII of the Civil Rights Act. The acts, however, must be based on the employee’s protected characteristic (for example, gender, race, national origin, religion, disability).

Petty slights and generally rude behavior will not rise to the level of an unlawful hostile work environment.

To determine whether harassment violates Title VII, courts consider the following factors:

- 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 employer may automatically be liable if a supervisor harasses an employee that causes an adverse action like termination, lost wages, or a suspension.

If a supervisor creates a hostile work environment for an employee, then the employer will escape liability only if it can prove:

- it reasonably tried to prevent and promptly correct the harassing behavior; and

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- the employee unreasonably failed to take advantage of any preventive or corrective opportunities offered by the employer

If a non-supervisory employee harasses another employee, then the employer will be liable for the harassment if the employer knew, or should have known, about the hostile work environment and failed to promptly correct it.

Evidence supporting Ahmed's hostile work environment claim

The [Second Circuit Court of Appeals](#) decision in Ahmed v. Astoria Bank overruled the District Court's ruling that Ahmed had not produced sufficient evidence to establish a hostile work environment. The evidence in this case was "right on the knife's edge of either granting [summary judgment] or allowing [the case] to go to the jury[.]" according to the Second Circuit Court of Appeals. It nonetheless found that the following alleged conduct by Ahmed's supervisor was "severe or pervasive" enough for a jury to conclude that an "abusive working environment" existed:

- "constantly" telling Ahmed to remove her hijab, which he referred to as a "rag,"
- demeaning Ahmed's race, ethnicity, and religion "[o]n several occasions," and
- making a comment during Ahmed's interview on September 11, 2013 that Ahmed and two other Muslim employees were "suspicious" and that he was thankful he was "in the other side of the building in case you guys do anything."

The case will now return to the federal district court for a jury trial on the hostile work environment claim.

Remedies available in hostile work environment claims

A variety of potential remedies will be available under Title VII of the 1964 Civil Rights Act if you win your hostile work environment case.

Assuming that your case is an individual, Title VII case against a private company, then a court may award you any combination of the following remedies:

- Compensatory damages, including emotional distress damages, as well as out of pocket expenses for job searches, medical expenses, etc.;
- Back pay;
- Punitive damages; and/or
- Attorney's fees, expert witness fees, and litigation costs

Other remedies may be available in hostile work environment cases against the federal, state, or local government, as well as cases under different anti-discrimination laws.



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