

Harassment is defined by law, not personalities

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If being a jerk were unlawful, many an administrator would find themselves behind bars. Even more attorneys (though our office would of course remain fully staffed). As for insurance company executives, well, the lot of them would be hammering rocks in some uncomfortably hot penal facility down south.

Many a client have come through my door sure that they have been “harassed,” exposed to a “hostile work environment” or otherwise wronged in a manner that is deserving of compensation. Sadly, in the vast majority of cases, neither compensation nor consolation is forthcoming. The simple fact is that being a jackass doesn’t violate any statute or case law standards; in many cases your boss can be mean and get away with it.

Unlawful harassment exists only when there is unwelcome verbal or physical conduct based on race, color, religion, sex, national origin, age (40 and over), disability or retaliation (for reporting harassment). If the rude behavior isn’t due to one of the factors listed above, it isn’t unlawful. Hence, if your boss just doesn’t like you, he can give you worse assignments, refuse to say hello to you in the hallway, and even insult your choice of shoes (or that of your mother).

However, if he makes a racial slur, insults you because of an ADA (Americans with Disabilities Act) qualifying disability, or gives you less favorable assignments because of your religion, then you may have a cause of action.

Similarly, a “hostile work environment” is created only when unwelcome comments or conduct based on the above listed, legally protected characteristics unreasonably interfere with an employee’s work performance or creates an intimidating, hostile (yes, that seems like a circular reference) or office work environment.

If your boss is simply rude and is constantly reprimanding you because he doesn’t like your personality, (i.e. the rudeness isn’t due to your race, color, religion, sex, national origin, age or disability), then it isn’t unlawful. However, if he holds you to a higher standard than other staff because of your race, color, religion, sex, national origin, age (over 40), or disability, then you may have a case.

So be careful before accusing your supervisor of harassment as the “common sense” definition of the word doesn’t apply in the employment law arena. As with all legal issues, whether or not you have a viable claim depends on the particular facts of the case and requires the review of someone experienced in the area. Hence, if you believe you are being harassed, contact your advocate immediately.