

Are Eminem and Too \$hort Too Offensive for the Workplace?

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There is a time and place for everything, or so they say. Eminem and Too \$hort are both somewhat polarizing artists. From songs such as Eminem’s “Cleaning Out My Closet” to Too \$hort’s infamous “Blow The Whistle”, some of their more provocative music has been put in the spotlight in the workplace of an apparel manufacturer. Stephanie Sharp and six other employees, including one man, filed a hostile work environment claim under Title VII of the Civil Rights Act against their employer. The plaintiffs alleged that many employees, “mostly women”, complained to the employer about the “obscene and sexually offensive and misogynistic character” of the music being played in the workplace, even as far as various employees placing speakers on a forklift and driving around the facility blasting the music. However, notably, “a number of men” were also “offended by the manner in which the music portrayed men, and their relationships with women.” The employer argued that the conduct was not discriminatory on the basis of sex, emphasizing that “both men and women were offended by the work environment allegedly created by the music played in the warehouse.”

The district court quoted the Supreme Court’s statement in [Oncale v. Sundowner Offshore Servs., Inc.](#), stating that the critical issue in that case was “whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed”, and dismissed the plaintiffs’ claim stating that the claim failed as a matter of law “because both men and women were offended by the... music”. This has become known as the “equal opportunity harasser defense”, meaning that employers are shielded from liability where there is evidence that employees outside of the protected group have been subjected to the same or similarly objectionable behavior.

However, on appeal, a ninth circuit court vacated the district court's judgment and remanded the case for further proceedings finding that routinely blasting "sexually abusive and misogynistic" music throughout the workplace, whether offensive to women or men (or both), could constitute sex-based harassment for both men and women. Several courts of appeals have held that a work environment rife with words or conduct that are offensive and degrading to women, even if women were not targeted for the offensive conduct, can constitute discrimination because it imposes a greater disadvantage on women in the terms and conditions of their employment than men. An employer cannot cure harassment to female employees by harassing male employees with equal intensity and degradation. The ninth circuit court noted that, under Title VII, it is "an unlawful employment practice for an employer . . . to discriminate against any individual with respect to [the] terms, conditions, or privileges of employment, because of such individual's . . . sex", and further, plaintiff's factual allegation that the employer permitted violent, misogynistic, and sexually offensive music to be blasted throughout the workplace served to state plausible claims of sex-based harassment. It is plausible that the lyrics were demeaning to men in addition to women by casting the men as pimps, murderers, or rapists.

The result in this case may differ under different circumstances, such as the different anti-discrimination laws of other jurisdictions or even the lyrics contained in music of a different genre. In this case, however, the impetus falls on the plaintiffs to amend the complaint to heighten the allegations of the lyrics of Eminem and Too \$hort that were demeaning to men.

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