

# Religious Harassment

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*Religious Accommodation &  
Discrimination in the Workplace:  
Common Trends in Cases Involving Religious Minorities*

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**by**

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## **I. INTRODUCTION**

This chapter reviews the elements necessary to succeed on a claim of religious harassment under Title VII of the Civil Rights Act of 1964, and then surveys cases that involved harassment because of religion.

Under Title VII, it is unlawful for an employer to “discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . religion[.]” 42 U.S.C. § 2000e-2(a)(1). Religion is broadly defined to include “all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.” 42 U.S.C. § 2000e(j).

## **II. RELIGIOUS HARASSMENT GENERALLY**

The prevailing test for religious harassment cases was set out 25 years ago in *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986), the case in which the Supreme Court identified sexual harassment as a form of sex discrimination. Subsequent cases have clarified that the same analysis for sexual harassment cases applies whether the harassment is instead based on religion, race, color, or national origin. *See generally, EEOC v. WC&M Enters., Inc.*, 496 F.3d 393 (5th Cir. 2007); *Abramson v. William Paterson Coll.*, 260 F.3d 265 (3d Cir. 2001). Religious harassment in violation of Title VII occurs when an employee is: 1) subjected to unwelcome statements or conduct; 2) the conduct is based on religion; 3) the conduct is so severe or pervasive that the employee reasonably finds the work environment to be hostile or abusive; and 4) there is a basis for holding the employer liable. *See Meritor*, 477 U.S. at 66. A hostile work environment is created when the “workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). The hostile work environment can take the form of either verbal or physical harassment or unwelcome imposition of religious views or practices on an employee. *Id.*; *see e.g., EEOC v. Preferred Mgmt. Corp.*, 216 F. Supp. 2d 763 (S.D. Ind. 2002) (imposition of religious views); *Johnson v. Spencer Press of Maine, Inc.*, 364 F.3d 368 (1st Cir. 2004) (physical violence).

## **III. UNWELCOMENESS**

In order for conduct to be considered “unwelcome” under Title VII, it must be both subjectively and objectively unwelcome. *Harris*, 510 U.S. at 21-22. It is necessary to consider all of the surrounding circumstances to determine whether the treatment or conduct is unwelcome. *See Meritor*, 477 U.S. at 68. Conduct is generally considered subjectively unwelcome if the employee did not solicit or incite it and clearly regards it as undesirable or offensive. *See Henson v. City of Dundee*, 682 F.2d 897, 903 (11th Cir. 1982). If the employee did not consider the conduct offensive or upsetting because of religion, however, it will not meet

the test for unwelcomeness. *See Sprague v. Adventures, Inc.*, 2005 WL 256582, at \*3 (10th Cir. Feb. 3, 2005) (affirming summary judgment where evidence indicated that the plaintiff was not upset by religious comments and did not complain to company management); *Gibson v. The Finish Line, Inc. of Delaware*, 261 F. Supp. 2d 785, 791 (W.D. Kentucky 2003) (plaintiff failed to demonstrate unwelcomeness of conduct where he testified that the comments were “not that serious” and “silly” or “immature”); *but see Domb v. Metropolitan Life Ins. Co.*, 2003 WL 21878784 (S.D.N.Y. Aug. 7, 2003) (denying summary judgment after plaintiff complained about manager’s comments that she was “the Spanish Jew who is a pain in the ass troublemaker” or the “Jewish rep”). Where employees are consensually engaged in vigorous, passionate debates about their religious beliefs, such circumstances are not likely to be deemed as unwelcome conduct. *Cf. Venters v. City of Delphi*, 123 F.3d 956, 976 (7th Cir. 1997) (plaintiff established that religious comments were subjectively unwelcome when she told her supervisor that he had “crossed the line”).

An employee must also demonstrate, however, that the conduct was objectively unwelcome, i.e. that a reasonable person in the plaintiff’s position would have found the conduct unwelcome. The purpose of this is to ensure that an overly sensitive employee cannot bring a case solely due to a subjective but unreasonable perception of unwelcomeness. Based on the Supreme Court’s decision in *Oncale v. Sundowner Offshore Serv., Inc.*, 523 U.S. 75 (1998), unwelcomeness, as well as the objective severity or pervasiveness of the harassment, is judged from the perspective of a reasonable person in the plaintiff’s position. *Id.* at 81. In *Oncale*, the court emphasized the one must consider “the social context in which particular behavior occurs and is experienced by its target” which “depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed.” *Id.* at 81-82; *see also EEOC v. Sunbelt Rentals, Inc.* 521 F.3d. 306, 315 (4th Cir. 2008) (plaintiff must demonstrate that a reasonable person in the plaintiff’s position would have found the environment objectively hostile or abusive).

For example, in *Khan v. United Recovery Sys., Inc.*, 2005 WL 469603 (S.D. Tex. 2005), the plaintiff, a Pakistani Muslim, alleged that she was subjected to anti-Muslim harassment beginning shortly after the September 11<sup>th</sup> terrorist attacks. She asserted that a co-worker stated that “all Muslims should be killed” and that Muslims should be “wiped off the face of the earth.” *Id.* at 1. When she confronted the co-worker, he stated he was “racist and proud of it.” *Id.* The plaintiff complained to her supervisor, but he never remedied the situation and became agitated when the plaintiff continued to complain. The supervisor further contributed to the harassment by implying that her mosque was teaching terrorism and by refusing to let the plaintiff leave work early to attend prayer services. The court held that the plaintiff proffered sufficient evidence to satisfy the requirements of religious harassment. Furthermore, the court held that the employer could be found liable because a reasonable jury could find that the supervisor acted as a proxy for the company, that the employer failed to exercise reasonable care to remedy the situation after it was reported, or that the harassment culminated in the plaintiff’s termination.

#### IV. “BECAUSE OF” RELIGION

In order to make out a case of religious harassment, the unwelcome conduct in question must have been “because of” religion, as opposed to because of something else about the plaintiff or some other neutral factor. 42 U.S.C. § 2000e-2(a)(1). A religious harassment claim must therefore be supported by evidence that the adverse treatment was based on religion. The term “religion” is defined as including “all aspects of religious observance and practice, as well as belief.” 42 U.S.C. § 2000e(j). A belief is “religious” for purposes of Title VII if it is “‘religious’ in the person’s own scheme of things,” *i.e.*, it is “a sincere and meaningful belief that occupies in the life of its possessor a place parallel to that filled by ... God.” *Redmond v. GAF Corp.*, 574 F.2d 897, 900 (7th Cir. 1978). Courts have defined religion to encompass both traditional theism and beliefs regarding matters of “ultimate concern” that “occupy a place parallel to that filled by God in traditionally religious persons.” *Welsh v. United States*, 398 U.S. 333, 340 (1970) (moral or ethical beliefs about what is right and wrong which are held with the strength of traditional religious convictions qualify as “religious” beliefs); *see also Fleischfresser v. Directors of School Dist. 200*, 15 F.3d 680, 688 (7th Cir. 1994). Beliefs stemming from a major organized religion will certainly be considered religious, as will beliefs stemming from a not-particularly-well-recognized religion if the beliefs are sincerely held by the plaintiff. *See, e.g., Campos v. City of Blue Springs*, 289 F.3d 546 (8th Cir. 2002) (court affirmed jury verdict for employee who followed tenets of Native American spirituality and was denied compensation, removed from assignments and harassed by her supervisor because of her religion). Religious beliefs can also come from belief systems outside of organized religion, including atheism. *Williams v. Allied Waste Serv.*, 2010 WL 3257733, at \*7 (E.D. Tex. 2010) (“Atheism is not a religion. Literally, it represents antipathy to religion. Nonetheless, discrimination against employees because of their atheistic beliefs is equally prohibited under the penumbra of rights guaranteed by Title VII”).

In order to support a religious harassment claim, the plaintiff may point to the defendant’s facially discriminatory remarks, as well as any of their remarks and behavior that may reasonably be construed as being motivated by their hostility to the plaintiff’s religion. *See Hardin v. S.C. Johnson & Son, Inc.*, 167 F.3d 340, 345 (7th Cir. 1999) (the conduct must have either a religious “character or purpose to support a Title VII claim”). In *EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306 (4th Cir. 2008), the plaintiff, an African-American Muslim, alleged that his co-workers often called him “Taliban” and “towel head,” suggested he was a terrorist, unplugged his computer equipment, and hid his timecard when he went to prayer. Sunbelt supervisors took no action to stop the harassment despite the plaintiff’s numerous complaints. The district court found that the harassment was not sufficiently severe or pervasive to constitute actionable harassment and that several of the incidents, such as hiding Ingram’s timecard, lacked a direct nexus with religion. The Fourth Circuit Court of Appeals reversed, holding, in light of the “habitual use of epithets”, that a reasonable jury could find that the mistreatment of the plaintiff was based on his religion. *Id.* at 317-18. *See also Johnson v. Spencer Press of Maine, Inc.*, 364 F.3d 368 (1st Cir. 2004) (upholding jury verdict for plaintiff in case in which the plaintiff’s supervisor referred to the plaintiff as “religious freak”, made comments such as “[the plaintiff] doesn’t fuck, drink or smoke, he must be a Catholic”, and on one occasion threatened the plaintiff by putting a knife to his neck).

While the plaintiff must show that the harassment was based on religion, the harassment can be based on religion even if religion is not explicitly mentioned. *See Turner v. Barr*, 811 F. Supp. 1, 2 (D.D.C. 1993) (hostile environment created where Jewish employee was subjected to a joke about the Holocaust, denied opportunity to work overtime, and ridiculed as a “turnkey;” although the latter two incidents did not refer to religion, the facts showed that he was singled out for such treatment because of his religion). Ultimately, however, the unwelcome conduct must have been about religion, not just implicate religion in a tangential way. For example, in *Prowel v. Wise Business Forms, Inc.*, 579 F.3d 285 (3d Cir. 2009), a gay man claimed that he was harassed because of his failure to conform to gender and religious stereotypes, and alleged sexual and religious harassment. *Id.* at 288-289. When asked to identify the religious beliefs to which he failed to conform, the plaintiff cited the biblical verse that “man should not lay with another man.” *Id.* at 293. The court dismissed his religious harassment claim, holding that the evidence did not demonstrate that the harassment was religious in nature, or that the employer or co-workers had tried to convert or proselytize him. *Id.* The court determined, however, that the plaintiff had raised a genuine issue of material fact with respect to whether the gender stereotyping to which he was subjected to represented sex discrimination under Title VII. *Id.*

In *Abramson v. William Paterson College*, 260 F.3d 265 (3d Cir. 2001), the Third Circuit Court of Appeals reversed the district court’s grant of summary judgment where the plaintiff, an Orthodox Jewish college professor, had raised evidence that her supervisor (herself Jewish) had re-scheduled faculty meetings and conferences to fall on the Jewish Sabbath so as to exclude the plaintiff, complained repeatedly about the plaintiff’s unwillingness to work on Jewish holidays, and required that the plaintiff use leave time for Jewish holidays, even when the holidays fell on days that the plaintiff was not required to teach. The court determined that this treatment cumulatively could be found to have “infected [the professor’s] work experience” because of her religion. *Id.* at 279.

In *Lundy v. General Motors Corp.*, 2004 WL 1262134 (6th Cir. June 4, 2004), the Sixth Circuit upheld the district court’s grant of summary judgment to the defendant. The district court had found two incidents of religious harassment. In the first incident, Lundy found a CD in his toolbox that read “you fat tub of god.” In the second incident, a picture was found in a co-worker’s toolbox with “a human body, goat head, Santa Claus hat, wings, and horns and said “Satan Paul,”” in reference to the plaintiff’s first name. *Id.* at 68. The plaintiff also raised evidence that co-workers drew a picture of him having sex a pig, and that a co-worker told him he belonged in the KKK. The appeals court agreed with the district court the additional evidence was not based on religion because “the fact that Lundy may view these symbols as sacrilegious does not mean they were intended to mock or insult his religion.” *Id.* at 72. The appeals court then affirmed the district court’s holding that the incidents related to religion did not rise to the level of severe and pervasive harassment because they were “isolated.” *Id.*

If evidence demonstrates that most or all employees were equally mistreated regardless of their religion, a claim of religious harassment is not likely to survive, as it suggests that the conduct was not based on religion but rather on poor management, poor relationships, or some other neutral factor. *See Marcus v. West*, 2002 WL 1263999, at \*11 (N.D. Ill. June 3, 2002)

(mistreatment of Sanctified Pentecostal Christian employee was not because of religion where evidence showed supervisor mistreated other employees other than the plaintiff due to her poor management and interpersonal skills). Further, a work environment in which employees and managers routinely behave in a manner that a plaintiff deems offensive to her religious beliefs may not necessarily be held as a hostile work environment based on the plaintiff's religion. In *Rivera v. Puerto Rico Aqueduct and Sewers Authority*, 331 F.3d 183 (1st Cir. 2003), the court affirmed the district court's grant of summary judgment for the employer, maintaining that offensive and unprofessional behavior that was disturbing to the devout Catholic plaintiff – such as frequent use of profanity by employees, horseplay and “derelict” antics – was not directed at her *because of* her religion. *Id.* at 191. “There is a conceptual gap between an environment that is offensive to a person of strong religious sensibilities and an environment that is offensive because of hostility to the religion guiding those sensibilities.” *Id.* at 190. The court noted that all employees were at times subjected to disrespectful treatment in the office. *Id.* at 191.

## V. RELIGIOUS COERCION

While most religious harassment cases involve negative comments to or negative conduct toward an employee because of his or her religion, Title VII is also violated when an employer or supervisor explicitly or implicitly coerces an employee to abandon, alter or adopt a religious practice or belief as a condition of receiving a job benefit or the employer or supervisor imposes their beliefs to such a degree to create a hostile work environment. *See Venters v. City of Delphi*, 123 F.3d 956, 976 (7th Cir. 1997). In *Venters*, the plaintiff alleged that her supervisor represented, due to her religious convictions, that she had been sent by God to save as many people as possible. The plaintiff claimed that her supervisor pressured her to attend the supervisor's church, that she had to be “saved” in order to be a good employee, that he would “trade” her for another employee if she refused to abide by the supervisor's religious rules. *Id.* at 962-63. Ultimately, after the plaintiff told the supervisor that he had “crossed the line” with his religious coercion, the supervisor terminated her. The district court held that the plaintiff did not have a religious discrimination claim under because she had not informed her employer of her religious beliefs or requested a religious accommodation. The Seventh Circuit Court of Appeals disagreed, finding that “a jury could reasonably characterize Venters' work environment at the Delphi police station as hostile and abusive.” *Id.* at 976. The court found that the alleged harassing remarks “were uninvited, were intrusive, touched upon the most private aspects of her life, were delivered in an intimidating manner, in some cases were on their face scandalous, and were unrelenting.” *Id.*

In *Peck v. Sony Corp.*, 1995 WL 505653 (S.D.N.Y. Aug. 25, 1995), the plaintiff asserted that her supervisor “regularly made comments to her concerning religion, including statements that Peck was a sinner and would go to hell.” *Id.* at \*2. The supervisor told the plaintiff to “repent”, held a prayer session in the plaintiff's work area, and told the plaintiff that God would love her no matter how much the plaintiff objected. The court denied the company's motion for summary judgment.

In *Nichols v. Snow*, 2006 WL 167708 (M.D. Tenn. Jan 23, 2006), the plaintiff, a Revenue Officer Trainee for the IRS, alleged that a co-worker, John Chaffin, had created a hostile work environment based on failure to conform to the supervisor's religious beliefs. The plaintiff alleged that Chaffin treated him poorly, impressed Chaffin's religion on him, and repeatedly degraded him for not going to church. The court concluded that the plaintiff had provided sufficient evidence to demonstrate that he was subjected to harassment based on his religion, that it was unwelcome, and that it interfered with his ability to perform his job. The court further determined that there was a genuine issue of material fact as to whether Chaffin was a co-worker, because he lacked authority over the hiring and firing process, or a supervisor, because he had to dictate the daily work of the activities of his trainees.

In *Millazzo v. Universal Traffic Serv., Inc.*, 289 F. Supp. 2d 1251 (D. Colo. 2003), the owner of the company openly advanced his religious opinions and sought to run a religiously-minded company. For example, he presented a "corporate prayer" at a company speech, expected employees to memorize a mission statement that contained religious overtones, discouraged employees from taking sick leave because of his belief that it demonstrated a lack of faith in God, and sent employees recordings of him reading the Bible. When some employees complained, he told them that the company was his and that he would run it how he sought fit. The jury found in favor of the plaintiffs and awarded them a total of \$770,000.

In *EEOC v. Preferred Mgmt. Corp.*, 216 F. Supp. 2d 763 (S.D. Ind. 2002), the company's management, including its CEO, were practicing Christians who incorporated their religion into their work. Preferred's mission statement and organizational chart all contained references to Christianity. Preferred offered religious gatherings, had two staff chaplains, and encouraged prayer including before and after staff meetings. The complainants were six former employees who were subjected to harassment based on their religion. For example, one complainant, a Unitarian, was told by the CEO that "she was going to burn in hell forever." Other complainants claimed to feel uncomfortable during meetings where Bibles were distributed, or were asked to share how "they had come to Jesus Christ." *Id.* at 779. The court denied summary judgment for the defendants and held that the EEOC had provided sufficient evidence to raise a genuine issue of material fact as to whether the work environment was hostile and abusive. The court stated that "a jury could reasonably conclude...that religion was pervasive in the workplace, that it was routine or regular aspect of work life at Preferred, that it was often intimidating or humiliating for employees of non-conforming beliefs, and that it was used as a means of classifying, segregating, and limiting employees in violation of Title VII. It could conclude that employees with conforming religious views could expect to enjoy a satisfactory work experience while employees with non-conforming views were ostracized and subject to intimidation, hostility, and abuse based on their religious beliefs and preferences...and that such classification and segregation may...alter the terms and conditions of employment." *Id.* at 824.

## **VI. SEVERE OR PERVASIVE**

The unwelcome, hostile treatment that is based on religion is not unlawful unless the conduct is severe or pervasive enough to create an objectively hostile or abusive work environment. *See Harris*, 510 U.S. at 21-22; *Faragher v. City of Boca Raton*, 524 U.S. 775, 787-

88 (1998) (sexual harassment). In order to determine whether conduct created a religiously hostile work environment, courts are directed to look at “all the circumstances.” *Id.* at 787; *EEOC v. Sunbelt Rentals, Inc.* 521 F.3d 306, 315 (4th Cir. 2008) (citing *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 82-83 (1998) (“the real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed”)).

Using a “holistic perspective is necessary, keeping in mind that each successive episode has its predecessors, that the impact of the separate incidents may accumulate, and that the work environment created thereby may exceed the sum of the individual episodes.”

*Williams v. Gen. Motors Corp.*, 187 F.3d 553, 563 (6th Cir. 1999).

Relevant factors in determining whether a workplace was religiously hostile include “whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Faragher*, at 23, 114 S.Ct., at 371; *Jones v. United Space Alliance*, 2006 WL 250761 (11th Cir. Feb. 3, 2006) (dismissing religious harassment claim because religious comments were not physically threatening or humiliating and did not interfere with the plaintiff’s job performance); *Sheikh v. Indep. Sch. Dist.* 535, 2001 WL 1636504 (D. Minn. Oct. 18, 2001) (Muslim employee did not suffer a materially adverse change to the terms or conditions of his employment through claim that he was ostracized by work colleagues because he refused to shake hands with female co-workers for religious reasons). So as to ensure that Title VII does not become a “general civility code” for the workplace, however, “simple teasing, . . . offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the ‘terms and conditions of employment.’” *Id.* at 788; *Johnson v. Autozone, Inc.*, 2011 WL 734284 (N.D. Ala. Feb. 24, 2011) (“Plaintiff has pointed to nothing more than isolated incidents that were infrequent and mild, that were in no way threatening or humiliating, and are, at least in part, mere acknowledgments by his supervisor of his awareness of the importance of plaintiff’s faith to his daily life.”); *Sublett v. Edgewood Universal Cabling Sys., Inc.*, 194 F. Supp. 2d 692, 703 (S.D. Ohio 2002) (where Rastafarian employee wore hair in dreadlocks for religious reasons, his supervisor’s one-time criticism of the dreadlocks and comment that he would not advance in the company did not constitute severe or pervasive harassment); *Desalvo v. Volhard*, 2009 WL 481875 (2d Cir. Feb. 26, 2009) (affirming summary judgment where plaintiff was called a “goody goody” and “holy holy” on a few occasions).

In *Mackmuhammad v. Cagle’s Inc.*, 379 Fed. Appx. 801 (11th Cir. 2010), the plaintiff alleged that he was subjected to anti-Muslim harassment when his co-workers made degrading comments teased him about his refusal to eat pork and called him “Bin Laden”. The Eleventh Circuit Court of Appeals, however, upheld the dismissal of the case, affirming the district court’s finding that the comments were not severe or pervasive so as to be “intimidating or threatening in any way.” *Id.* at 805. The Court described the comments as “rude, insulting, and insensitive” but held that they fell “more in the category of epithets or boorish behavior, which are not actionable under Title VII.” *Id.*

In *Mariotti v. Mariotti Building Products*, 2011 WL 2670570 (M.D. Pa. July 8, 2011), the plaintiff, an employee with his father's company, alleged that he was subjected to a hostile work environment following a "spiritual awakening" that caused him to switch church affiliations. The plaintiff claimed that he was often "teased and taunted" about his new church, and that co-workers frequently referred to the plaintiff as "Reverend Bob" and made degrading remarks about his new church. The court held that "while the comments . . . were insensitive and perhaps offensive, they were not frequent or severe." *Id.* at 4. See also *Uko-Abasi v. AmeriPath Inc.*, 2011 WL 924894 (S.D.N.Y. Jan. 25, 2011) (while court concluded that co-workers' actions were unwelcome and were motivated by religion, plaintiff "failed to show that it was objectively hostile enough to change the conditions of his employment and create an abusive working environment"); *Stallworth v. Singing River Health System*, 2011 WL 253247 (S.D. Miss. June 24, 2011) (holding that a supervisor's comment that plaintiff could not have Sundays off of work because "there are authorities over you and powers that you have to obey other than just the Holy Spirit" was not sufficiently severe and pervasive to constitute a hostile work environment).

Within the totality of circumstances, there is neither a threshold magic number of harassing incidents that gives rise, without more, to liability nor a number of incidents below which a plaintiff fails to state a claim. See *Daniels v. Essex Group, Inc.*, 937 F.2d 1264, 1270-71 (7th Cir. 1991); *Hammad v. Bombardier Learjet, Inc.*, 192 F. Supp. 2d 1222, 1239 (D. Kansas 2002) (denying summary judgment and stating that the pervasive harassment requirement is not determined by a "counting measure"). For pervasive harassment, "a work environment viewed as a whole may satisfy the legal definition of an abusive work environment for purposes of a hostile environment claim, even though no single episode crosses the Title VII threshold". See *Williams v. Gen. Motors Corp.*, 187 F.3d 553, 564 (6th Cir. 1999). Even where incidents of allegedly harassing behavior are not considered severe, "a relentless pattern of lesser harassment that extends over a long period of time violates Title VII." *Gul-E-Rana Mirza v. The Neiman Marcus Group*, 649 F. Supp. 2d 837, 845-46 (N.D. Ill. 2009), citing *Cerros v. Steel Technologies, Inc. (Cerros I)*, 288 F.3d 1040, 1047 (7th Cir. 2002).

If the religiously hostile conduct took place frequently enough that a reasonable jury could conclude that it changed the terms or conditions of the employee's employment, it may be deemed sufficient to demonstrate harassment. See *Shanoff v. Illinois Dep't of Human Servs.*, 258 F.3d 696, 705 (7th Cir. 2001) (reversing summary judgment where plaintiff experienced "six rather severe instances of harassment" in a period of a few months); *Butler v. MBNA Tech., Inc.*, 2003 WL 22479215 (N.D. Tex. Oct. 31, 2003) (denying summary judgment where supervisor and co-workers made comments such as "middle eastern people smell" and "Iranians are crazy"); *Hammad v. Bombardier Learjet, Inc.*, 192 F. Supp. 2d 1222 (D. Kan. 2002) (five alleged instances of religious harassment over six-year period could be found to represent severe or pervasive harassment). In *Bains, LLC v. Arco Prods. Co.*, 405 F.3d 74 (9th Cir. 2005), the Ninth Circuit Court of Appeals upheld a jury verdict for the plaintiffs, Sikhs who ran a fuel transport company, against Arco, a fuel refinery. The evidence demonstrated that Sikh employees of Bains were regularly called "rag-heads" and "towel-heads" by Arco managers and were told to clean up fuel spills with their turbans. The jury further found that Arco managers purposefully delayed Bains fuel deliveries so as to reduce profits of the company, succeeded in unfairly terminating Bains' contract with Arco, and then bragged that they would no longer have

to do business with Sikhs. The Ninth Circuit found that the district court had correctly determined that the plaintiffs could present their claim under 42 U.S.C. § 1981.

A plaintiff may be able to demonstrate that an “isolated incident” of harassment can be actionable under Title VII as severe if it is “extremely serious.” *Faragher*, 524 U.S. at 788. The more “severe” harassing acts are, the less “pervasive they have to be to constitute an actionable violation. *See Williams*, 187 F.3d at 563. For this reason, while rare, courts occasionally permit religious harassment claims where the harassment occurred in a single, but extremely severe, incident.

**Additional cases finding severe or pervasive religious harassment:**

In *Johnson v. Spencer Press of Maine*, the jury awarded the plaintiff \$400,000 in compensatory damages and \$750,000 in punitive damages. The court affirmed the verdict but reduced the damages to the \$300,000 cap under Title VII. The plaintiff, a religious Catholic, had alleged that his supervisor routinely harassed him because of his religion, regularly calling him a “religious freak”, telling him that “he was getting real tired of hearing [that the plaintiff] couldn’t work overtime on Sundays, that he was involved in church and classes,” and saying “[the plaintiff] doesn’t fuck, drink or smoke, he must be a Catholic”. The supervisor also tried to humiliate the plaintiff by calling him a “fucking cock sucker” and a “fucking queer”. *Id.* On one occasion, the supervisor physically threatened the plaintiff by putting a knife to the plaintiff’s neck. The court wrote:

Almost all of the inappropriate comments concerning Johnson’s religion focused on a consistent theme: that Johnson was too chaste and sober for Halasz’s taste and that this was because of Johnson’s religious beliefs. . . The harassment occurred throughout Johnson’s work day including when he was attempting to perform his custodial duties. On multiple occasions Halasz threatened Johnson with violence and once he actually placed the point of a knife under Johnson’s chin. In sum, there was more than ample evidence to support the jury’s conclusion that the harassment was severe and pervasive.”

*Id.* at 377.

In *EEOC v. WC&M Enters., Inc.*, the Fifth Circuit Court of Appeals reversed the district court’s grant of summary judgment in favor of the defendant. The plaintiff, a practicing Muslim of Indian descent, was subjected to harassment following the September 11<sup>th</sup> terrorist attacks. Co-workers and managers frequently harassed the plaintiff by calling him names such as “Mohammed”, “Taliban”, or “Arab,” asking questions like “Why don’t you just go back where you come from?,” and making fun of his religious dietary restrictions. After one incident, his manager issued a written warning stating that the plaintiff was “acting like a Muslim extremist.” The harassment continued despite his requests that it stop. The district court found that the EEOC had not demonstrated a hostile work environment because it had not shown the harassment was so severe “that it kept him from doing his job” as evidenced by his positive sales performance. The appeals court rejected this reasoning, holding that lost sales, although

relevant, was not dispositive. The court then applied the totality of circumstances test and held that the EEOC had “presented sufficient evidence to create an issue of fact as to whether the harassment was so severe or pervasive as to alter a condition of his employment.”

In *Hammad v. Bombardier Learjet, Inc.*, 192 F. Supp. 2d 1222 (D. Kan. 2002), the court denied the employer’s motion for summary judgment where the plaintiff had alleged “five instances of religious intolerance.” *Hammad*, 192 F. Supp. 2d at 1239. These instances included a co-worker asking the plaintiff whether he did not eat pork because of “[his] freakin’ religion?”, a co-worker making fun of the plaintiff’s observance of Ramadan, and another co-worker stating “What is this damn Muslim religion that supports suicide?” *Id.* at 1233. A hostile workplace was further created by additional harassing comments about the plaintiff’s race and national origin. Although there had only been five religiously harassing comments over a six-year period, the court determined that they were “frequent enough that a jury may find pervasive harassment based upon the identified invidious factors.” *Id.* at 1239.

In *Shanoff*, a white Jewish employee presented religious and racial harassment claims, based on the following allegations:

Lewis said things to Shanoff that he relates to his harassment claim: (1) in late December 1997, after Shanoff met with Formigoni to tell him that his health was failing because of Riperton-Lewis’s discriminatory conduct, Riperton-Lewis told Shanoff that he “must be pretty stupid because [he] would never learn that she was protected, that Howard Peters [who is black] would protect her, that [Peters] was one of them and that she would see to it that [Shanoff’s] white ass-[his] white Jewish ass would be kept down;” (2) during that same conversation, Shanoff told Riperton-Lewis that his health was failing, to which she responded, “good;” (3) in January 1998, Riperton-Lewis prohibited Shanoff from teaching medical students; (4) Riperton-Lewis had also affirmed to Shanoff that month that she “was going to be able to keep [his] white Jewish ass down;” (5) in late February or early March 1998, Riperton-Lewis again told Shanoff that “she knew how to handle white Jewish males, and once and for all that [he] needed to leave Madden and get out of her hair;” (6) when Shanoff responded that her conduct was harming his health and career, she replied by laughing and dismissing him from her office; and (7) in October of 1998, while Shanoff had been on leave for several months, Riperton-Lewis called him at home to demand that he explain his absence, and when Shanoff asked her “why are you being like this,” she responded, “I hate everything that you are.” *Shanoff*, 258 F.3d at 704-05.

The court held that while many of the comments appeared not to be about religion on their face, a reasonable jury could find that they were sufficiently connected to several facially discriminatory remarks so as to represent evidence of a pattern of religious harassment. *Id.* at 705.

In *Leifer v. New York State Div. of Parole*, 391 Fed. Appx. 32 (2d Cir. 2010), the plaintiff, a practicing Jew, alleged that his employer subjected him to a hostile work environment because of his religion by refusing to reschedule meetings because of Jewish holidays and refusing to extend his lunch hour during Passover. The district court agreed with the employer's defense that the actions were not explicitly hostile due to the plaintiff's religion. The Second Circuit Court of Appeals disagreed, finding that, viewing the facts in totality, a reasonable jury could have found that the "interactions were sufficiently hostile to have altered his employment conditions for the worse" and were due to the plaintiff's religion. *Id.* at 36.

In *Gul-E-Rana Mirza v. The Neiman Marcus Group*, 649 F. Supp. 2d 837 (N.D. Ill. 2009), the plaintiff's supervisor targeted her for hostile treatment, called her a "bitch", told her to look for another job, and forced her to work in undesirable areas of the store. Although the supervisor never made any comments about the plaintiff's religion, and although a racial slur about the plaintiff had been used on one occasion by a co-worker rather than by the supervisor, the court held that the evidence that the plaintiff was singled out for this negative treatment was sufficient for a jury to find that the mistreatment was because of the plaintiff's religion. *Id.* at 860.

#### **Cases finding no severe or pervasive harassment:**

In *Jones v. United Space Alliance*, 2006 WL 250761 (11th Cir. Feb. 3, 2006), the court of appeals granted summary judgment for the defendant because the plaintiff, Sylvester Jones, failed to establish a prima facie case of a hostile work environment based on his Apostolic/Pentecostal faith. Jones alleged he was harassed based on his religion because his manager "made derogatory remarks to him based on his religion" and co-workers took actions such as removing a flyer about an event at his church from the community bulletin board, requesting he turn down his religious music, and asking him to remove the Bible from his desk. The court held that "none of the alleged incidents occurred on a repeated basis, none of the incidents were physically threatening or humiliating, and none interfered with Jones' job performance." *Id.* at 56. Therefore, the evidence failed to "demonstrate conditions sufficiently severe or pervasive to alter the terms of Jones' employment and or create a discriminatorily abusive working environment... Thus, even if Jones subjectively perceived the incidents as severe, it would not be objectively reasonable to construe them as severe." *Id.*

In *Baqir v. Principi*, 434 F.3d 733 (4th Cir. 2006), the Fourth Circuit Court of Appeals affirmed summary judgment in favor of the employer, holding that the plaintiff, a black, Pakistani Muslim, failed to demonstrate religious harassment. The court determined that the plaintiff had failed to rebut the evidence demonstrating that he had been terminated due to poor performance, and had failed to raise evidence that his supervisors harbored a discriminatory animus against him.

In *Keplin v. Maryland Stadium Auth.*, 2008 WL 5428082 (D. Md. Dec. 31, 2008), the court granted the employer's motion to dismiss. The plaintiff, a practicing Catholic, alleged that his supervisor created a hostile work environment by making two degrading comments about the Catholic church. On another occasion when the plaintiff, a security officer, was providing security at an event hosted by Reverend Graham, his supervisor pressured him to "get saved" by

Graham. The court held that these three incidents were insufficient to demonstrate severe or pervasive harassment. *Id.* at 400.

In *Tyson v. Clarion Health Partners, Inc.*, 2004 WL 1629538 (S.D. Ind. June 17, 2004), the plaintiff, a Muslim woman, claimed seven instances of religiously harassing conduct, including negative comments about her prayer rug and stating “nobody likes you guys over here.” *Id.* at 11. The court found that most of the religiously insensitive comments amounted to nothing more than teasing and that the “nobody likes you guys over here” comment was an isolated incident, and granted summary judgment for the employer. *Id.*

In *Kosereis v. Rhode Island*, 331 F.3d 207 (1st Cir. 2003), the First Circuit Court of Appeals affirmed the district court’s grant of summary judgment in favor of the employer. The plaintiff was a Turkish-born Muslim working as a vocational teacher for the defendant. He alleged that he was unfairly disciplined for tardiness, required to work in a poorly ventilated building, and not permitted to take a sabbatical to Turkey. The court held that the plaintiff failed to prove that the employer’s rationale for its actions was pretextual, as other employees were treated in a similar manner. The court held that the plaintiff’s allegations that residents called him “Turkey” and fellow teachers teased him in the lunchroom about his ethnic food did not rise to the level of severe and pervasive harassment, and that they were neither physically threatening nor did they interfere with his work performance.

However, where reasonable jurors could disagree as to whether alleged incidents of harassment adversely altered the plaintiff’s working conditions, the issue of whether a hostile work environment existed may not properly be decided as a matter of law. *See Schiano v. Quality Payroll Sys., Inc.*, 445 F.3d 597, 605 (2d Cir. 2006). Hostile work environment claims present mixed questions of law and fact that better suited for jury determination. *Id.*

“While [plaintiff’s] workplace may not have been permeated with discriminatory insults, the true test to determine whether an employee has been subjected to a hostile work environment is whether the harassment is of such quality or quantity that a reasonable employee would find the conditions of [his] employment altered for the worse.” *Leifer v. New York State Division of Parole*, 2010 WL 3292937, at \*3 (2d Cir. Aug. 23, 2010).

## **VII. EMPLOYER LIABILITY**

### **A. Harassment by Supervisor**

Just as in sexual harassment cases, an employer in a religious harassment case can establish an affirmative defense to liability for sexual harassment by a supervisor if it demonstrates that: (1) the employer exercised reasonable care to prevent and promptly correct any harassing behavior, and (2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm. *See Ellerth*, 524 U.S. at 765; *Faragher*, 524 U.S. at 807-08; *Knox v. Suntrust Banks, Inc.*, 2010 WL

4628012 (E.D. Tenn. Nov. 5, 2010). The employer generally bears the burden of making out both elements of this affirmative defense. *See Ellerth*, 524 U.S. at 765; *Faragher*, 524 U.S. at 807-08. Subsections C) through F), below, discuss exceptions to this affirmative defense.

With respect to the question of what defines a supervisor, the EEOC has applied agency principles to conclude that:

An individual qualifies as an employee's "supervisor" if:

- a. the individual has authority to undertake or recommend tangible employment decisions affecting the employee; or
- b. the individual has authority to direct the employee's daily work activities.

*See* EEOC Enforcement Guidance, "Vicarious Liability for Unlawful Harassment by Supervisors" (June 18, 1999) (reprinted in FEP Manual, at 405:7651-7672 and online at <<http://www.eeoc.gov/policy/docs/harassment.html>>). The EEOC also recognized that even harassment by those who were outside the victim's supervisory chain of command could result in vicarious liability to the employer:

In some circumstances, an employer may be subject to vicarious liability for harassment by a supervisor who does not have actual authority over the employee. Such a result is appropriate if the employee reasonably believed that the harasser had such power. The employee might have such a belief because, for example, the chains of command are unclear. Alternatively, the employee might reasonably believe that a harasser with broad delegated powers has the ability to significantly influence employment decisions affecting him or her even if the harasser is outside the employee's chain of command.

*Id.* at 405:7655.

### **B. Harassment by Coworkers / Negligence Standard**

When the harassment is perpetrated by a co-worker, the appropriate standard for employer liability is negligence, not the aforementioned direct or vicarious liability for harassment by a supervisor. An employer is liable for harassment by co-workers where it: 1) knew or should have known about the harassment, and 2) failed to take prompt and appropriate corrective action. *See Sunbelt*, 521 F.3d at 319; *see also Guidelines on Discrimination Because of National Origin*, 29 C.F.R. § 1606.8(d) (employer liable for co-worker harassment about which it knew or should have known and failed to act). If the employer takes prompt and effective remedial action once it learns of the alleged religious harassment, it generally will not be held liable. *See Sheikh v. Indep. Sch. Dist.* 535, 2001 WL 1636504 at \*5 (D. Minn. Oct. 18, 2001) (employer not liable where it took reasonable steps to stop harassment of Muslim

employee). For example, in *Powell v. Yellow Book USA, Inc.*, 445 F.3d 1074 (8th Cir. 2006), the Eighth Circuit Court of Appeals affirmed summary judgment for the employer, Yellow Book, after the plaintiff claimed that a co-worker had harassed her by seeking to convert her to the co-worker's religion and by posting religious messages in the co-worker's cubicle. After receiving the plaintiff's complaint, management told the co-worker that she was not to broach religious matters with the plaintiff; it also found that the co-worker's placement of religious messages in her own cubicle did not violate company policy, prompting the plaintiff to complain further about the religious messages. The district court, affirmed by the Eighth Circuit, held that Yellow Book's response to the co-worker's harassing conduct was prompt and reasonable, and that the co-worker had stopped raising religious issues with the plaintiff after being instructed not to by the company. With respect to the religious messages in the co-worker's cubicle, the Eighth Circuit emphasized that "an employer...has no legal obligation to suppress any and all religious expression merely because it annoys single employee." *Id.* at 1078.

### **C. Tangible Employment Action**

The affirmative defense to harassment cases is not available, as a matter of law, where the harassment results in a tangible employment action such as a termination, constructive discharge, denial of promotion, or demotion. *See Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765; *Faragher*, 524 U.S. at 807-08; *see also Abdullah v. Philadelphia Hous. Auth.*, 2000 WL 377796, at \*17 (E.D. Pa. Mar. 29, 2000) (employer denied summary judgment based on affirmative defense where it failed to show that the plaintiff was not subjected to a tangible employment action). The rationale for applying strict liability is that only a supervisor or agent of the employer could cause a tangible employment action, through "an official act of the enterprise." *Ellerth*, 524 U.S. at 762. Under agency law, the challenged actions were aided by the agency relationship; such "requirements will always be met when a supervisor takes a tangible employment action against a subordinate." *Id.* at 762-63.

For example, in *Knox v. Suntrust Banks, Inc.*, 2010 WL 4628012 (E.D. Tenn. Nov. 5, 2010), the plaintiff, a religious Christian, alleged that he had been called "Choir boy," "Church boy," or "Christ boy" by his supervisor, and ridiculed for not drinking alcohol and for going to bible study classes. The supervisor ultimately terminated the plaintiff. The court held that "Suntrust is not entitled to summary judgment on the hostile work environment claim based on this affirmative defense because Knox suffered a tangible, adverse employment action when his employment was terminated."

### **D. Alter Ego Principle**

Under agency principles, an employer is automatically liable for hostile work environment and harassment, even if it does not result in a tangible employment action, if "the agent's high rank in the company makes him or her the employer's alter ego." *Ellerth*, 524 U.S. at 758. If the harasser is of a sufficiently high rank to fall "within that class of an employer organization's officials who may be treated as the organization's proxy," which would include officials such as a company president, owner, partner, or corporate officer, the harassment is automatically imputed to the employer and no affirmative defense can be raised. *Faragher*, 524

U.S. at 789; *see also EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors* (1999), <http://www.eeoc.gov/policy/docs/harassment.html>.

#### **E. Employer Did Not Exercise Reasonable Care to Prevent Harassment**

Generally speaking, an employer will be deemed to have exercised reasonable care to prevent harassment if it has a policy prohibiting harassment in the workplace. *See, e.g., Gordon v. Schafer Contracting Co. Inc.*, 469 F.3d 1191 (8th Cir. 2006). If the policy was insufficient or was not sufficiently distributed to employees, however, a court may find that the employer has not met its burden of demonstrating the first prong of the affirmative defense. *See, e.g., Preferred Mgmt. Corp.*, 216 F. Supp. 2d at 839 & n.25 (employer's anti-harassment policy was inadequate because it did not prohibit religious harassment and employees were not trained about religious harassment).

#### **F. Reporting Would Have Been Futile**

If an employer is entitled to raise the affirmative defense and if it has taken appropriate steps to prevent and correct harassment, it must next show that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm. *See Ellerth*, 524 U.S. at 765; *Faragher*, 524 U.S. at 807-08. If an employee suffered religious harassment but did not report it to a management authority, therefore, the employer will often be able to prevail on the affirmative defense. An employee's subjective belief that reporting harassment would get her in trouble or might lead to retaliation will typically not be sufficient to escape this obligation to report harassment. *See generally, EEOC v. Cagle's, Inc.*, 168 Fed. Appx. 917, 919 (11th Cir. 2006) (subjective fears of employee that she would be terminated for reporting racial harassment did not excuse employee's failure to report harassment in compliance with the employer's policy). If an employee can raise sufficient evidence that a jury could conclude that reporting the harassment would have been futile, however, an employer may not prevail on this second prong of the affirmative defense. *Gorzynski v. JetBlue Airways*, 596 F.3d 93 (2d Cir. 2010) (sexual harassment); *Preferred Mgmt. Corp.*, 216 F. Supp. 2d at 839 (acknowledging futility of reporting the religious harassment to Preferred management where managers sought to "resolve" the complaints through the very religious means that gave rise to the complaints).

### **VIII. FILING DEADLINE / CONTINUING VIOLATION DOCTRINE**

The statute of limitations for private-sector Title VII actions is governed by 42 U.S.C. § 2000e-5(e)(1), which requires that a charge "shall be filed [with the EEOC] within one hundred and eighty days after the alleged unlawful employment practice occurred" unless the charge is also filed with a state or local agency, which extends the filing period to 300 days. *See Delaware State College v. Ricks*, 449 U.S. 250, 256-59 (1980); *see also* 29 C.F.R. § 1601, subpart B (procedural requirements). In contrast, federal-sector employees must inform their agency's designated EEO office within 45 days of the alleged discrimination or harassment; the agency then allows the employee to participate in either counseling or alternative dispute resolution. If

these mechanisms are unsuccessful, the federal employee can then file an EEO complaint with the agency, but has only 15 days to do so. *See* 29 C.F.R. § 1614.

The courts have recognized that the “continuing violation” doctrine may be used to show that there is “an organized scheme leading to and including a present violation,” such that it is the cumulative effect of the discriminatory practice, rather than any discrete occurrence, that gives rise to the cause of action. *See Butler v. MBNA Technology, Inc.*, 111 Fed. Appx. 230, 232 (2004); *Jensen v. Henderson*, 315 F.3d 854, 860-61 (8th Cir. 2002). This allows the harassment plaintiff to include conduct occurring prior to Title VII’s statutory 300-day deadline or the applicable Section 1981 statute of limitations period. *Id.* at 238. The Supreme Court has held that the continuing violation doctrine could be applied to harassment claims, but not to other kinds of discrete discrimination claims. *See National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002). This is because harassment claims are fundamentally different from those based on discrete employment acts:

Hostile environment claims are different in kind from discrete acts. Their very nature involves repeated conducts. The “unlawful employment practice” therefore cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own. Such claims are based on the cumulative effect of individual acts.

*Id.* at 115 (internal citations omitted). Therefore, the harassment plaintiff can recover damages for the entire course of harassment, even for the acts that occurred outside of the 180/300 day window, so long as at least one incident of religious harassment occurred within the 180/300 day window. The Supreme Court did recognize that employers can raise defenses based on laches if the employee waits too long before filing a lawsuit. *Id.* at 121-22.

Courts look at three factors in determining whether acts are sufficiently related to constitute a continuing violation: 1) whether the alleged acts involve the same type of discrimination, tending to connect them in a continuing violation; 2) whether the acts are in the nature of recurring events, or are more in the nature of isolated events; and 3) whether the act or acts have the degree of permanence that should alert an employee to assert his rights. *See Butler*, 111 Fed. Appx. at 232. The result is that a plaintiff who satisfies the continuing violation doctrine can incorporate a much broader range of harassing conduct and can more readily meet the pervasive or severe conduct element. Yet, even those plaintiffs who cannot satisfy this doctrine may still be able to use untimely events as background evidence to support her claims based on the timely events. *Morgan*, 536 U.S. at 115.

## **IX. ASSERTING RELATED CLAIM OF RACE DISCRIMINATION**

Harassment of employees based on religion and race, or religion and national origin, often overlap, as when a Muslim (religion) Arab (race) employee is harassed because of those

protected categories, or when a Muslim (religion) Pakistani (national origin) is harassed. Where a plaintiff in a religious harassment case was born outside the United States or is a member of a racial minority, and where the evidence suggests that the harassment was based not only on religion but on national origin or race, as well, the plaintiff may wish to assert a national origin or racial harassment claim. If a claim for racial harassment is added, it can be done not only under Title VII but also under 42 U.S.C. § 1981, with the consequent advantages of asserting a Section 1981 claim:

- (1) the plaintiff is no longer subject to the damages caps of Title VII for compensatory and punitive damages. *Compare* 42 U.S.C. § 1981a (Title VII damages caps from \$50,000 to \$300,000, depending on size of the employer) with *Pavon v. Swift Transp. Corp. Inc.*, 192 F.3d 902 (9th Cir. 1999) (no caps on damages under Section 1981).
- (2) the employee can name individuals as defendants in their personal capacities. This has the advantage of another source of potential damages, plus settlement pressure on the employer if the individual sued is sufficiently high up in the company or connected to the company's litigation decisionmaking; etc.
- (3) no administrative exhaustion requirement. Rather than file a charge of discrimination with the EEOC and then wait for EEOC processing, as is required under Title VII, a Section 1981 plaintiff may proceed directly to court.
- (4) the statute of limitations for most claims under Section 1981 is four years, far longer than the maximum 300-day EEOC filing deadline permitted under Title VII. *See Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004).

A plaintiff should be careful not to assert harassment on the grounds of so many protected categories, however, that he or she loses credibility and appears to be grasping at straws. *See, e.g., Baqir v. Principi*, 434 F.3d 733 (4th Cir. 2006) (asserting hostile work environment due to plaintiff's religion, race, color, national origin, and age).

Where an employee is harassed because of his association with employees of another race, he or she may be able to assert a claim for racial harassment. “[D]iscrimination based upon a close relationship with a person of another race is a cognizable claim under Title VII and § 1981.” *Swick v. United Parcel Service*, 2005 WL 1793723, at \*6 (D.N.J. July 26, 2005); *accord Stezzi v. Aramark Sports*, 2009 WL 2356866, at \*4 (E.D. Pa. July 30, 2009) (citing cases). In *Romdhani, Maloney, and Zeller v. ExxonMobil Corp.*, 2011 WL 722849 (D. Del. Feb. 23, 2011), two white, American-born Muslim plaintiffs brought a claim for religious harassment. They also brought a claim for racial harassment, asserting that part of the harassment stemmed from their association with their husbands and their store manager, who are Arab. The court denied summary judgment on both counts. *Id.* at \*16.