

Newsletter

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What Is, and What Isn't, a "Hostile Environment"?

From time to time, we hear people broadly use the phrase "hostile environment." This phrase can have a colloquial meaning. But it is a central concept to the legal definition of "harassment." It has a specific meaning in anti-discrimination law. This article helps explain what is and is not a "hostile work environment," from a legal viewpoint. We hope this helps clarify when you should (and should not) use this phrase to describe a situation.

A "hostile work environment" does **not** refer to *any* difficult working environment. It also is not an environment where two employees simply do not get along or when someone has treated another unprofessionally. People might experience "hostility" in those situations, but that is different from the meaning of "hostile environment."

Instead, "hostile environment" reflects that type and level of behavior required to conclude that the behavior is "harassment" *under anti-discrimination laws*.

The first requirement of a "hostile environment" is that the conduct is based on a "protected category." These categories are defined in the law. They include race, religion, national origin, color, sex (gender), age, disability, marital, pregnancy or pregnancy related conditions, childbirth, veteran, sexual orientation, sexual identify, and other legally protected statuses. If the problematic behavior is not based on one of

these protected categories, then it is **not** a "hostile environment."

Even if there is conduct based on one of the protected categories, there is a second requirement for conduct to create a "hostile environment." The second requirement is that the conduct is severe and/or pervasive. What does this mean? An exact definition is difficult. It is fact-dependent, as follows:

- 1) The conduct must be severe and/or pervasive both subjectively and objectively (reasonable person).
- 2) That analysis is informed by the frequency of the 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.
- 3) Petty slights, annoyances, isolated incidents, or run of the mill juvenile behavior in the workplace generally do not create a "hostile environment." In other words, not all offensive conduct rises to the level of "hostile environment."
- 4) Evaluating conduct includes the *environment* as a whole. As one federal court has phrased the issue, much like "a play cannot be understood on the basis of some of its scenes[,] a discrimination and hostile work environment analysis "must concentrate not on individual incidents, but on the overall scenario, which is informed by the sumtotal of those incidents." *Lounds v. Lincare, Inc.*

SUU Policies [5.27](#) and [5.60](#) guide the analysis of whether conduct creates a "hostile work environment." (See Policy 5.27, DEFINITIONS subsection P). The [SUU Equal Opportunity Office](#) implements those policies. If you have any questions about whether certain behavior creates a "hostile work environment," please [reach out to that Office](#).

Please note that "hostile environment" also applies to whether "harassment" exists in student academic and program contexts, using a similar analysis (but with minor distinctions), as further explained in the Policies.

Even if the behavior at issue is not based on a protected category or does not rise to the severe and pervasive level described above, you may still have a situation that needs attention. In these situations, you can look to SUU Policies [5.61 Abusive Conduct](#), [6.28 Faculty Professional Responsibility](#), and [8.3.5 Termination of non-Academic Staff Employees and Disciplinary Sanctions](#) as resources, depending on your circumstances. Free speech rights may also impact the analysis. See SUU Policy 5.1, Free Speech and Advocacy on Campus.

If you have questions, please reach out to us or the resources offices listed in the referenced SUU policies.



How to Get a University Contract Ready for Review

1 Follow all policies and procedures as outlined in [Policy 5.24 Purchasing](#) and [Policy 7.7 Contracts](#), and/or contact contracts@suu.edu or legal@suu.edu for a template agreement. Also, see [Purchasing Forms](#).



6 Submit your contract for review to: contracts@suu.edu. Include a few sentences outlining a description of what the contract is for, background information, and context for your review request in the body of the email. Please also include any external deadlines.



Please build in time for edits, reviews, and negotiations. While in many cases contract reviews may be completed in a matter of days, some contracts have taken 6-8 weeks to finalize. If you have questions about the review process and timing, please contact contract@suu.edu.

2 If not already in Word or Google Docs, convert the contract to one of those editable formats.



3 Review the business terms and obligations and *provide any necessary edits in redline form* to the business terms and obligations. Consider whether your unit can meet the obligations and whether the other side's obligations are clear and reasonable. Often contracts given by third parties are not initially favorable to the University.



5 Ensure the person listed to sign for SUU is an authorized contract signature authority and edit as necessary. The list of signatories is [here](#).



4 Add (i.e., copy and paste) the "SUU Government Entity Required Contractual Provisions Attachment," ([GEA](#)) at the end of your writable contract with the following clause above the signature line in the main contract document.



"The Provisions found in the Government Entity Required Contractual Provisions Attachment, which is attached hereto, are hereby incorporated in this contract and made a part hereof."



WE MOVED!

The SUU Office of Legal Affairs is no longer located in the Bennion Building. Our office is now located in the University Campus Services Building, Room 318. Please stop by or contact us through our [online form](#), email at legal@suu.edu, or call us at (435) 586-7738.

About this Newsletter: This newsletter is designed to serve as an informational tool, bringing you topics of interest and practical tips. It should not be relied on as a substitute for legal advice. Laws, regulations and policies change frequently, and legal advice requires careful consideration and application of all relevant facts. If you have legal questions or need legal advice concerning any University matter, please contact the Office of Legal Affairs.