

## WAS OVERSTOCK.COM EMPLOYEE SUBJECTED TO HOSTILE WORK ENVIRONMENT?



A district court dismissed a former Overstock.com employee's lawsuit claiming a hostile work environment and retaliation. Appellate judges had a different perspective when reviewing her allegations that a male co-worker sexually harassed her and she was fired for complaining of his behavior. The woman worked in a cubicle next to an employee reportedly known for criticizing female workers, viewing sexually explicit content at work and his poster of a "scantily-clad" woman at his desk. She claimed that he disrespected her by not looking at her when she spoke, mocking her at meetings and treating her like a "servant." An incident involving an apparent failure to issue a purchase order brought matters to a head. The man sent an email ridiculing the woman for not sending the order, and she replied regarding his lack of professionalism – both messages with recipients including supervisors and an outside vendor. As a result, both employees received written disciplinary warnings. The company later testified that co-workers did not corroborate her allegations but rather said that she was contributing to a hostile work environment. The woman, in contrast, claimed that she got along well with others. According to testimony, the woman was then told that she had a choice of quitting or being transferred to an Overstock warehouse. Supervisors claim that the reassignment to the warehouse, where the woman occasionally worked, was not optional but a "manager's decision." The plaintiff said that she was never sent, but supervisors testified that she had been. Additional complaints led higher-ups to note that the woman's performance was not up to par at the warehouse, and she was consequently fired. To argue a hostile work environment claim, a person must show an "atmosphere" of hostility. The appeals court pointed out that Title VII of the Civil Rights Act was not designed to guarantee "workplace harmony," but to subvert conduct so relentless that "the very terms of one's employment are altered." Appellate judges believed that the co-worker's behavior was persistent enough that a jury might be swayed, but the claim fails due to the company's response. Complaints of the poster at the man's desk resulted in an order to remove it, which he did. When the plaintiff complained of his remarks, he was disciplined. Beyond that, the woman never complained to supervisors. Every formal complaint was met with prompt action from Overstock, and the plaintiff couldn't prove that the man's conduct did not stop after he was disciplined.



The appeals court did not concur with the district court's dismissal of the retaliation claim. It believed that pertinent facts concerning the case were still in dispute – whether or not the woman informed supervisors of the alleged harassment; why she was disciplined for the email exchange when the co-worker initiated and "publicized" their clash; was the transfer to the warehouse a threat, and was she actually sent there? There must be "no genuine dispute of material fact" to dismiss a claim of retaliation, but appellate judges saw plenty to dispute. A request to amend her claim to include gender-based disparate treatment was denied by the district court and affirmed by the appeals court. Appellate judges also affirmed the dismissal of the hostile work environment claim, but the retaliation claim was reversed and remanded for further proceedings.