

## 9th Circuit Rules Misogynistic Rap Music in the Workplace May Constitute Sex Discrimination



The 9th U.S. Circuit Court of Appeals at San Francisco has ruled that playing sexually derogatory and violent rap music in the workplace can create a hostile work environment that amounts to sex discrimination under Title VII of the Civil Rights Act. The court's decision, which came in response to a lawsuit filed by seven women and one man against apparel manufacturer S&S Activewear, highlights the importance of maintaining a respectful and inclusive workplace environment.

The lawsuit was initiated by Stephanie Sharp and her colleagues who alleged that S&S Activewear subjected them to a sexually hostile work environment at their warehouse in Reno, Nevada. The company played sexually explicit rap music, which allegedly fueled male workers to engage in sexually graphic gestures and make offensive remarks. Initially, the district court dismissed the case, ruling that the music offended both men and women and did not amount to sex discrimination.

The 9th Circuit Court of Appeals overturned the district court's decision and vacated the dismissal of the case. The court emphasized that an employer cannot escape liability by cultivating a generally hostile and offensive workplace. It held that instances of sex discrimination should not be overshadowed or dismissed amidst a pervasive atmosphere of incivility.

The appeals court outlined two critical factors that should be considered in cases involving a hostile work environment. Firstly, the presence of conduct that offends both genders does not automatically preclude a Title VII claim. In other words, the fact that the music offended both men and women does not absolve the employer of potential sex discrimination liability. Secondly, harassment does not have to be directed at a particular individual to constitute a Title VII violation. The court recognized that a hostile work environment can be created through sexist epithets, regardless of how they are expressed.

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The 9th Circuit's ruling has significant implications for Title VII claims related to hostile work environments. It reinforces the notion that sexist and derogatory behavior, whether communicated through music, spoken words, or gestures, can contribute to a workplace environment that violates Title VII protections. The court emphasized that such behavior, regardless of its form or delivery, has the potential to offend and transform the workplace into a hostile environment.

Judge M. Margaret McKeown, who former President Bill Clinton appointed, authored the decision. The panel also included Judge Jay S. Bybee, appointed by former President George W. Bush, and Judge Patrick J. Bumatay, appointed by former President Donald Trump. This composition highlights the bipartisan nature of the ruling and underscores the consensus among the judges regarding the interpretation of Title VII in this context.

The 9th Circuit Court of Appeals' ruling serves as a significant precedent in cases involving sexually derogatory and violent music in the workplace. It clarifies that such conduct can contribute to a hostile work environment, constituting sex discrimination under Title VII. The decision emphasizes the importance of maintaining a respectful and inclusive workplace, where a pervasive culture of incivility does not overshadow concrete incidents of sex discrimination. Employers must take proactive measures to address and prevent the presence of derogatory music or any form of sexist behavior to ensure compliance with Title VII and promote a more inclusive and respectful working environment.