

<p><b><u>S. 103 Provisions re Proving Harassment Claims</u></b></p> <p>(P. 6, lines 7-21 and P. 7, line 1)</p>	<p><b><u>Harmonious with Case Law?</u></b></p>	<p><b><u>Examples from U.S. Supreme Court, Second Circuit, and Vermont</u></b></p>
<p>Harassment claims are evaluated on the totality of the circumstances, not in isolation.</p>	<p>YES</p>	<p><b>Richardson v. New York State Dep't of Corr. Serv., 180 F.3d 426, 437 (2d Cir. 1999)</b> (“We are cautioned to consider the totality of the circumstances, and to evaluate the “quantity, frequency, and severity” of the incidents.”) (citations omitted)</p>
<p>A single incident may be enough to show unlawful harassment.</p>	<p>YES</p>	<p><b>Tomka v. Seiler Corp., 66 F.3d 1295, 1305 (2d Cir.1995)</b> (“[E]ven a single incident of sexual assault sufficiently alters the conditions of the victim's employment and clearly creates an abusive work environment...”)</p>
<p>The employee’s acquiescence or participation in the conduct is not a per se bar to recovery</p>	<p>YES</p>	<p><b>Meritor Savings Bank v. Vinson 477 U.S. 57 (1986)</b>, (“The fact that the sex-related conduct was ‘voluntary’ is not a defense to a sexual harassment suit... the gravamen of any sexual harassment claim is that the alleged sexual advances were ‘unwelcome.’”)</p>
<p>The employee needn’t show that they could no longer do their job</p>	<p>YES</p>	<p><b>21 V.S.A. 495d(13)(C)</b> (“Harassment may include conduct [that] has the purpose or effect of substantially interfering with an individual’s work performance <u>or</u> creating an intimidating, hostile, or offensive work environment.”) (emphasis added)</p>
<p>The employee needn’t suffer psychological injury.</p>	<p>YES</p>	<p><b>Harris v. Forklift Sys., Inc., 510 U.S. 17, 20 (1993)</b> (“So long as the environment would reasonably be perceived, and is perceived, as hostile or abusive, there is no need for it also to be psychologically injurious.”)</p>
<p>The employee needn’t limit their claim to conduct that happens in the workplace.</p>	<p>YES</p>	<p><b>Campo v. City of New York, 2022 WL 970730, at *23 (E.D.N.Y. Mar. 31, 2022)</b> (“[S]exual harassment outside the workplace can, under certain circumstances, contribute to a hostile work environment.”) (citation omitted)</p>
<p>“Ambient” harassment claims can still be considered hostile work environment:</p> <ul style="list-style-type: none"> <li>• The complaining employee does not have to be the individual being harassed;</li> <li>• The fact that the conduct is experienced by employees outside of the protected class is not a per se bar to recovery;</li> <li>• The employee needn’t show they were the target of the harassment</li> </ul>	<p>YES</p>	<p><b>Petrosino v. Bell Atlantic, 385 3d 210 (2d Cir. 2004)</b> (In workplace featuring sexual graffiti and comments regarding sexual exploits, “[t]he fact that much of this offensive material was not directed specifically at [the complaining employee] . . . does not preclude a jury from finding that the conduct subjected [her] to a hostile work environment based on her sex.”)</p> <p><b>Wise v. New York City Police Dep’t, 928 F. Supp. 355, 368 (S.D.N.Y. 1996)</b> (female police officer established harassment claim when conduct included “training films containing pornography [and] pornographic materials [] routinely posted at the station house...”)</p> <p><b>Schwapp v. Town of Avon, 118 F.3d 106 (2d Cir. 1997)</b> (In racial harassment claim brought by black police officer, jury may consider whether disparagement of other, racial or ethnic minority groups contributed to hostile work environment)</p>