

<p><u>S. 103 Provisions re Proving Harassment Claims</u></p> <p>(P. 6, lines 7-21 and P. 7, line 1)</p>	<p><u>Harmonious with Case Law?</u></p>	<p><u>Examples from U.S. Supreme Court, Second Circuit, and Vermont</u></p>
<p>Harassment claims are evaluated on the totality of the circumstances, not in isolation.</p>	<p>YES</p>	<p>Richardson v. New York State Dep't of Corr. Serv., 180 F.3d 426, 437 (2d Cir. 1999) (“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>Tomka v. Seiler Corp., 66 F.3d 1295, 1305 (2d Cir.1995) (“[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>Meritor Savings Bank v. Vinson 477 U.S. 57 (1986), (“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>21 V.S.A. 495d(13)(C) (“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>Harris v. Forklift Sys., Inc., 510 U.S. 17, 20 (1993) (“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>Campo v. City of New York, 2022 WL 970730, at *23 (E.D.N.Y. Mar. 31, 2022) (“[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"> • The complaining employee does not have to be the individual being harassed; • The fact that the conduct is experienced by employees outside of the protected class is not a per se bar to recovery; • The employee needn’t show they were the target of the harassment 	<p>YES</p>	<p>Petrosino v. Bell Atlantic, 385 3d 210 (2d Cir. 2004) (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>Wise v. New York City Police Dep’t, 928 F. Supp. 355, 368 (S.D.N.Y. 1996) (female police officer established harassment claim when conduct included “training films containing pornography [and] pornographic materials [] routinely posted at the station house...”)</p> <p>Schwapp v. Town of Avon, 118 F.3d 106 (2d Cir. 1997) (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>