

## Workplace Bullying May Amount To Actionable Discrimination

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A recent court of appeals decision highlights the risks associated with failing to address allegations of workplace “harassment” or “bullying.”

In *Woods v. Boh Brothers* (5th Cir. 2013), Kerry Woods was employed by Boh Brothers as welder. In this capacity, Woods was supervised by Chuck Wolfe. Woods claimed that during his employment, Wolfe subjected him to almost-daily verbal and physical harassment:

- Wolfe directed very foul language and locker room talk at Woods;
- Wolfe referred to Woods by graphically derogatory names many of which concerned gender;
- Wolfe simulated sex acts in front of Woods; and
- Wolfe made fun of Woods for using “wet wipes” instead of toilet paper.

Significantly, Wolfe did not deny that he engaged in this conduct. In fact, here is what he had to say about the wet-wipes:

In an interview with the EEOC, Wolfe explained:

Mr. Woods sat at a table with a bunch of iron workers and told us that he brought, you know, feminine wipes - not femine wipes - but Wet Ones or whatever to work with him becuase he didn't like it, didn't like to use toilet paper. It's [not] the kind of thing you'd want to say in front of a bunch [of] rough iron workers that they had there. They all picked on him about it. They said that's kind of feminine to bring these, that's for girls. To bring Wet Ones to work to wipe your ass, you damn sure don't site in front of a bunch of iron workers and tell them about it. You keep that to yourself if in fact that's what you do.

Why did Wolfe engage in this conduct? He later explained (during a deposition) that Woods was just not “manly” enough:

Q. By saying that, you were saying he was feminine; correct:

A. Yes.

Q. You meant he was not being manly; is that correct?

A. Yes, sir.

According to Wolfe, however, he was just “playing around”:

A. I don't agree with that, no, no. He was an iron worker just like the rest of [t]hem. He performed and did his job just like everyone else. We was just playing...

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When Woods complained to management, Wolfe told the Company that he did not like Woods because he “didn’t fit in.” Woods later sued the Company under Title VII claiming that Wolfe subjected him to unlawful harassment because he did not conform to Wolfe’s view of how a man should act (referred to as a gender-stereotyping claim). Woods ultimately secured a significant jury verdict, which was upheld by the Fifth Circuit.

The takeaway? Employers must be sure to address all forms of workplace harassment. Even a seemingly “garden-variety” case of bullying can amount to actionable harassment under certain circumstances.