

**EEOC Briefs Endorsing the Ninth Circuit
Deterrence Standard**

Anderson v. CRST, No. 15-55556 (9th Cir.), Brief of the Equal Employment Opportunity Commission in Support of Plaintiff/Appellant and in Favor of Reversal, at 31-32 (quoting *Fuller v. City of Oakland*, 47 F.3d 1522 (9th Cir. 1995)), available at 2015 WL 9449421

Christian v. Umpqua Bank, No. 18-35522 (9th Cir.), Brief of the Equal Employment Opportunity Commission in Support of Plaintiff/Appellant and in Favor of Reversal, at 17 (quoting *Fuller* and *Ellison v. Brady*, 924 F.3d 872 (9th Cir. 1991)), available at 2019 WL 646904

EEOC & Carlton v. Harbert-Yeargin, Inc. No. 00-5150/00-5232 (6th Cir.), Proof Brief of the Equal Employment Opportunity Commission as the Appellee-Cross-Appellant, 30 (quoting *Fuller*)

EEOC v. CRST Van Expedited, Nos. 09-3764, 09-3765, 10-1683 (9th Cir.), Corrected Opening Brief of the Equal Employment Opportunity Commission as Appellant, 81 (quoting *McGinest v. GTE Service Corp.*, 360 F.3d 1103 (9th Cir. 2004))

EEOC v. CRST Van Expedited, Nos. 09-3765, 09-3764, 10-1682 (9th Cir.), Reply Brief of the Equal Employment Opportunity Commission as Appellant, 37 (“CRST was obligated not just to deter future harassment by one particular harasser, but to deter other potential harassers”), available at 2010 WL 4080365

EEOC v. CRST Van Expedited, No. 18-1446 (9th Cir.), Opening Brief of the Equal Employment Opportunity Commission, 59 (quoting *Ellison* and *Fuller*)

EEOC v. Prospect Airport Services, Inc., No. 07-1772 (9th Cir.), Brief of the Equal Employment Opportunity Commission as Appellant, 37 (quoting *Fuller*), available at 2008 WL 937153

EEOC v. The Boeing Co., No. 05-17386 (9th Cir.), Reply Brief of the U.S. Equal Employment Opportunity Commission, 16-17 (citing *McGinest*), available at 2006 WL 2983609

EEOC v. The Boeing Co., No. 05-17386 (9th Cir.), Brief of Plaintiff-Appellant the U.S. Equal Employment Opportunity Commission, 35 (citing *McGinest*, *Fuller*, and *Ellison*), available at 2006 WL 2378673

EEOC v. Prospect Airport Services, Inc., No. 07-1772 (9th Cir.), Reply Brief of the Equal Employment Opportunity Commission Appellant, 23 (quoting *Nichols v. Azteca Rest. Enters., Inc.* 256 F.3d 864 (9th Cir. 2001)), available at 2008 WL 2131119

Ninth Circuit Model Jury Instructions Civil 10.7

10.7 CIVIL RIGHTS—TITLE VII—HOSTILE WORK ENVIRONMENT CAUSED BY NON-IMMEDIATE SUPERVISOR OR BY CO-WORKER—CLAIM BASED ON NEGLIGENCE

The plaintiff seeks damages from the defendant for a hostile work environment caused by [sexual] [racial] [other Title VII protected characteristic] harassment. The plaintiff has the burden of proving both of the following elements by a preponderance of the evidence:

1. the plaintiff was subjected to a [sexually] [racially] [other Title VII protected characteristic] hostile work environment by a [non-immediate supervisor] [co-worker]; and
2. the defendant or a member of the defendant's management knew or should have known of the harassment and failed to take prompt, effective remedial action reasonably calculated to end the harassment.

A person is a member of management if the person has substantial authority and discretion to make decisions concerning the terms of the harasser's employment or the plaintiff's employment, such as authority to counsel, investigate, suspend, or fire the accused harasser, or to change the conditions of the plaintiff's employment. A person who lacks such authority is nevertheless part of management if he or she has an official or strong duty in fact to communicate to management complaints about work conditions. You should consider all the circumstances in this case in determining whether a person has such a duty.

The defendant's remedial action must be reasonable and adequate. Whether the defendant's remedial action is reasonable and adequate depends on the remedy's effectiveness in stopping the individual harasser from continuing to engage in such conduct and in discouraging other potential harassers from engaging in similar unlawful conduct. An effective remedy should be proportionate to the seriousness of the offense.

If you find that the plaintiff has proved both of the elements on which the plaintiff has the burden of proof, your verdict should be for the plaintiff. If, on the other hand, the plaintiff has failed to prove either of these elements, your verdict should be for the defendant.
