

# Supervisor's "Hitler" Comment not Enough to Create Hostile work Environment

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Does a single incident create a hostile work environment? Just this month, the U.S. Court of Appeals for the Fifth Circuit held that one offensive comment was insufficient to create a hostile work environment.

In *Satterwhite v. City of Houston*, Harry Singh allegedly used the phrase "Heil Hitler" in a meeting attended by employee Courtney Satterwhite. Mr. Satterwhite was offended by Mr. Singh's comment and reported the incident to human resources. Mr. Singh was verbally reprimanded and later discovered that Mr. Satterwhite had reported the incident. Mr. Singh was promoted and Mr. Satterwhite began reporting directly to Mr. Singh.

The next month, the City Controller's Office and City Office of Inspector General (OIG) received letters from the Anti-Defamation League, which complained of the "Heil Hitler" comment by Mr. Singh and his subsequent promotion. The OIG investigated Mr. Singh's reported conduct and concluded that "Singh made a comment to Ms. Martina Lee that they were not running a Hitler Court," which violated an executive order of the mayor of Houston prohibiting a city employee from using such offensive words.

Over the next few months, Mr. Singh disciplined Mr. Satterwhite in several instances and recommended that he be demoted. Mr. Singh was demoted to an Assistant City Controller IV and his salary was lowered by two pay grades.

Mr. Satterwhite brought a suit alleging that he was unlawfully retaliated under Title VII and corresponding state statutes for reporting Mr. Singh's "Heil Hitler" comment to human resources. The district court granted summary judgment to the City because Mr. Satterwhite was unable to show that his reports of the "Heil Hitler" comment was the proximate cause of his demotion. Mr. Satterwhite appealed the decision.

The Fifth Circuit Court of Appeals affirmed. In doing so, it noted that in order to establish a prima facie case of retaliation under Title VII, an aggrieved employee must show: (1) he engaged in an activity protected by Title VII; (2) he was subjected to an adverse employment action; and (3) a causal link exists between the protected activity and the adverse employment action. Here, Mr. Satterwhite claimed that he engaged in two protected activities: (1) reporting the "Heil Hitler" comment to human resources; and (2) responding to inquiries regarding OIG's

investigation of the “Heil Hitler” comment. The court explained that for Mr. Satterwhite’s activities to be protected, he would have to reasonably believe that Mr. Singh’s comments created a hostile work environment under Title VII. “Isolated incidents (unless extremely serious) do not amount to actionable conduct under Title VII.” The court stated that **even though the OIG found that the comment violated an executive order, the comment in isolation did not satisfy the definition of an “unlawful employment practice.”**

While a single comment may not have been sufficient in this instance to rise to the level of an actionable claim, employers are nevertheless cautioned to train, counsel, and advise employees that single instances of inappropriate comments or conduct, depending upon the nature and severity, could amount to unlawful harassment, discrimination, or retaliation.

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## Topics

Retaliation, Title VII