

House Passes Bill to Extend Hostile Work Environment Protections to Service Members

By Greg T. Rinckey

Service members who felt vulnerable after a federal appellate court earlier this year ruled the Uniformed Service Employment and Reemployment Rights Act (USERRA)

does not protect them from hostile work environments now have reason to be hopeful. Legislation proposing to protect service members from work environments in which their military duty is a source of hostility is advancing in Congress.

The U.S. House of Representatives on Oct. 12 passed the Veterans Opportunity to Work Act of 2011 (VOW Act, H.R. 2433). Among the bill's many provisions, which mostly aim to help veterans to more easily transition into civilian employment, is one that would amend USERRA

. The bill proposes to clarify USERRA

's definitions for employment benefits to include "the terms, conditions, or privileges of employment."

It was because this phrase was missing from USERRA

that the U.S. 5th

Circuit Court of Appeals ruled in *Carder v. Continental Airlines, Inc.*

that the law's employment protections do not cover hostile work environments. Other anti-discrimination-based federal laws, such as Title VII of the Civil Rights Act and the Americans with Disabilities Act, feature this phrase. The protection for "conditions...of employment" is what is crucial for employees seeking to enforce their rights when facing a hostile work environment.

As the 5th

Circuit noted in its *Carder*

decision, the U.S. Supreme Court said in *Harris v. Forklift Systems, Inc.*

that "When the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions

of the victim's employment and create an abusive working environment, Title VII is violated." In *Carder*

, a group of Continental Airlines pilots who also served in the U.S. Armed Forces Reserves and Air National Guard sued the airline because of their supervisors' discriminatory, harassing and degrading comments based on their military duty.

This legislation, which was forwarded to the Senate, would plug an egregious oversight in USERRA

. The law already prohibits employers from discriminating against service members by denying them employment, reemployment, retention in employment, promotion and employment benefits based on their military service. How would the purposes of USERRA

be served when despite such protections employers are still allowed to get away with harassing the service members they employ? In ruling against the pilots in *Carder*

, the 5th

Circuit said the Supreme Court's emphasis on the importance of the specific word "conditions" to hostile work environment claims "cannot be ignored." The Senate, too, should not ignore the omission of this word from USERRA

and pass the VOW Act.

Service members need to remember that just because USERRA

does not specifically provide protections against hostile work environments, they still have options. They could, for example, sue an employer for violating their USERRA

rights for constructive discharge if a supervisor's harassment becomes so unbearable that they are driven to resign. Service members who have been harassed because of their military duty should immediately contact a military law attorney.

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