



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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September 18, 2025

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Re: *Sylvia Rodriguez v. Science Applications International Corporation*
Case No. CL-2023-16872

Dear Counsel:

The issue before the Court is whether an employee presented sufficient evidence at trial that she suffered a hostile work environment in violation of the Virginia Human Rights Act. The Court holds the employee failed to present sufficient evidence to support one prong of her hostile work environment claim—that her employer subjected her to an abusive working environment based on her sex. The Court will grant the employer's motion to strike.

I. OVERVIEW.

Plaintiff Sylvia Rodriguez ("Rodriguez") filed a complaint against Defendant Science Applications International Corporation ("SAIC"). Rodriguez alleged that a co-worker, George Trogner ("Trogner"), created a hostile work environment and that SAIC knew of this and failed to take effective

action to stop it by responding with remedial action reasonably calculated to end the harassment.¹
(Compl. Count I.)

The Court commenced a jury trial on April 14, 2025, on Rodriguez's Complaint. At the close of Rodriguez's case-in-chief, SAIC moved to strike the evidence and renewed the motion at the close of all the evidence. The Court denied the first motion and took the renewed motion under advisement. The parties submitted supplemental briefs on the motions, the last one submitted June 13, 2025. Because of the fact-intensive nature of a motion to strike, the Court recounts the facts relevant to its ruling within its analysis, below.

II. ANALYSIS.

This matter is before the Court on SAIC's Renewed Motion to Strike Rodriguez's hostile work environment claim. A motion to strike tests the legal sufficiency of the plaintiff's evidence and a trial court "should resolve any reasonable doubt as to the sufficiency of the evidence in plaintiff's favor and should grant the motion only when it is conclusively apparent that plaintiff has proven no cause of action against defendant, or when it plainly appears that the trial court would be compelled to set aside any verdict found for the plaintiff as being without evidence to support it." *J&R Enters. v. Ware Creek Real Est. Corp.*, 80 Va. App. 603, 609 (2024) (citing *Collelo v. Geographic Servs., Inc.*, 283 Va. 56, 67 (2012)).

The Virginia Human Rights Act ("VHRA") prohibits employment discrimination based on sex, among other things. VA. CODE ANN. § 2.2-3900, *et. seq.* "It is an unlawful discriminatory practice for an employer to discharge or otherwise discriminate against any individual with respect to such individual's conditions or privileges of employment because of such individual's sex." VA. CODE ANN. §2.2-3905 (cleaned up).

The General Assembly expanded the application of the VHRA only recently.² As a result, Virginia cases interpreting the VHRA are scarce. By comparison, there is a robust body of federal law interpreting the nearly identical federal analogue of the VHRA, Title VII of the Civil Rights Act of 1964, 42 USCS § 2000e-2(A)(1).³ Those federal court decisions are merely persuasive authority in Virginia courts. *Toghill v. Commonwealth*, 289 Va. 220, 227 (2015); *Smiley v. Kansas*, 196 U.S. 447, 455 (1905). However, "when the General Assembly adopts language substantially similar to that of another jurisdiction's regulation, a presumption arises that the legislature also intended to adopt the prior interpretation placed upon the language by the promulgating authority." *Virginia Dep't of Labor &*

¹ Rodriguez also alleged retaliation, (Compl., Count II), intentional infliction of emotional distress (Compl., Count III), and negligent retention (Compl., Count IV). She initially sued both SAIC and Trogner. The Court sustained a demurrer to Counts III and IV, dismissing them with prejudice. Order, July 12, 2024 (Capsalis, J.) It also dismissed Trogner as a party. (*Id.*) The jury returned a defense verdict on Count II, rendering the Renewed Motion to Strike on that count moot.

² Virginia first enacted the Human Rights Act in 1987. *See Doss v. Jamco, Inc.*, 254 Va. 362, 367 (1997). Obviously, this is long after enactment of the U.S. Civil Rights Act of 1967.

³ Virginia's statute is broader than its federal analogue. For example, the VHRA, unlike Title VII, includes "sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, age, military status, disability, or ethnic or national origin" as protected categories. VA. CODE ANN. § 2.2-3905 (2025). Also, the VHRA defines "employer" differently. *Compare* VA. CODE ANN. § 2.2-3905 *with* 42 U.S.C. § 2000e(b).

Industry v. Westmoreland Coal Co., 233 Va. 97, 104 (1987).⁴ Since the federal and state statutes are so similar, the Court will apply the presumption that the General Assembly adopted the federal interpretation of the Virginia statute when it expanded it.

However, federal courts occasionally will not only interpret statutes, but they will also apply facts to their interpretation in ways Virginia courts do not. This is why civil cases are more likely to go to trial when brought in Virginia courts than when brought in federal courts.⁵

Virginia's Supreme Court eschews "short-circuiting" of trials. *Seyfarth, Shaw, Fairweather & Geraldson v. Lake Fairfax Seven Ltd. Pshp.*, 253 Va. 93, 95 (1997); *CaterCorp, Inc. v. Catering Concepts, Inc.*, 246 Va. 22, 24 (1993). So, for example, in determining whether a company's response to a racial harassment complaint was "prompt and proportional to the seriousness of the offense," the 4th Circuit identified some factors to consider. *EEOC v. Xerxes Corp.*, 639 F.3d 658, 670-71 (2011). It then listed what, factually, the employer company did and held, as a matter of law, that the actions were sufficient and affirmed the trial court's grant of summary judgment in the company's favor. *Id.* at 671.

This Court treats the federal court's creation of factors to consider as a persuasive interpretation of the law. Yet it treats the federal court's application of facts to be unpersuasive. This is because "the circuit court must not judge the weight or credibility of evidence, because to do so would invade the province of the jury." *Dill v. Kroger Ltd. P'ship I*, 300 Va. 99, 109 (2021) (internal quotation omitted). "A circuit court should only grant a defendant's motion to strike when, after viewing the evidence in the light most favorable to the non-moving party, the evidence is insufficient to prove a cause of action." *Bd. of Supervisors v. Route 29, LLC*, 301 Va. 134, 150 (2022). When the question is whether an employer company's actions were "prompt and proportional," the court can instruct a jury on proper considerations but leave it to the jury to determine whether the company's actions were prompt and proportional. So, this Court will give more persuasive weight to federal cases that directly explain the law rather than those that apply it.

The Court gives great weight to federal court decisions interpreting the "hostile work environment" cause of action particularly because the federal courts effectively created it through their interpretation of Title VII. The term is nowhere in Title VII nor the VHRA. A hostile work environment under Title VII (and by extension the VHRA) arises when an individual is subjected to severe or pervasive conduct that creates an abusive working environment based on sex. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65, 67 (1986). Additionally, the VHRA requires that the employer knew or should have known about the hostile environment and failed to take prompt and adequate remedial action. This ensures that liability is not imposed on employers for all inappropriate workplace behavior but only for conduct that they failed to address appropriately. *Katz v. Dole*, 709 F.2d 251, 255 (4th Cir. 1983).

⁴ *But see, Vlaming v. W. Point Sch. Bd.*, 302 Va. 504, 527 (2023). Virginia maintains its federalism authority to interpret its own constitution (and, logically, its own statutes) without deference to the U.S. Supreme Court or its inferior courts. However, when the legislature adopts a federal statute presumably aware of existing federal interpretation, *Westmorland Coal* is an exception to that principle.

⁵ This distinction could be a reason why the General Assembly expanded the application of the Human Rights Act—to take advantage of Virginia's practice of eschewing the relatively common pre-trial dismissal of civil cases in federal courts.

Thus, a plaintiff must prove: "(1) she experienced unwelcome harassment; (2) the harassment was based on her gender or race; (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere; and (4) there is some basis for imposing liability on the employer." *Evans v. Int'l Paper Co.*, 936 F.3d 183, 192 (4th Cir. 2019). The determination of whether a hostile work environment exists depends on the totality of the circumstances, as there is no strict mathematical standard for such assessments. *Harris v. Forklift Sys.*, 510 U.S. 17, 23 (1993).

A. Abusive Working Environment Based on Sex.

A party may prove discrimination directly or circumstantially.

"Direct evidence encompasses conduct or statements that both (1) reflect directly the alleged attitude, and (2) bear directly on the contested employment decision." *Laing v. Fed. Express Corp.*, 703 F.3d 713, 717 (4th Cir. 2013) (internal quotation marks and brackets omitted). However, "in the absence of a clear nexus with the employment decision in question, the materiality of stray or isolated remarks is substantially reduced." *Merritt v. Old Dominion Freight Line, Inc.*, 601 F.3d 289, 300 (4th Cir. 2010).

Both parties agreed that George Trogner was an unprofessional employee at SAIC. Rodriguez does not present direct evidence of sex-based hostility.⁶ For example, Rodriguez never observed him say a comment suggesting that women are inferior in some way. (Tr. Day 2 PM 54:6-54:15.) There was no evidence of sexual advances or sex-based topics or language.

Instead, Rodriguez argues circumstantially that Trogner treated her differently or with greater hostility because she is a woman. See *Lack v. Wal-Mart Stores, Inc.*, 240 F.3d 255, 261 (4th Cir. 2001). She points to Trogner's similar hostile behavior around other women to prove her point. Evidence to prove this can be a showing that a harasser treated members of the same sex in the same hostile manner. See *Strothers v. City of Laurel*, 895 F.3d 317, 330 (4th Cir. 2018); see also *Conner v. Schrader-Bridgeport Int'l, Inc.*, 227 F.3d 179, 200 (4th Cir. 2000).⁷

However, if an alleged harasser is equally offensive to men and women alike, there is no discrimination based on sex. *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 80 (1998) ("Title VII

⁶ The closest Rodriguez comes to direct evidence is the testimony of Louann Carlan. Ms. Carlan testified that Trogner commented generally on the way women dressed (Tr. Day 4 AM 202:8-12) and made a disapproving facial expression about women attending military school. (Tr. Day 4 AM, at 193:15-197:18.) Not even Rodriguez bothers to spotlight this liminal evidence as direct proof of discrimination.

⁷ Rodriguez, alternatively, offered direct comparator evidence of Trogner's general hostility towards women by comparing his behavior toward women to his different behavior toward specific men. "A comparison between similar employees will never involve precisely the same set of work-related offenses occurring over the same period of time and under the same sets of circumstances. However, a plaintiff must produce evidence that the plaintiff and comparator dealt with the same supervisor, were subject to the same standards and engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." *Haynes v. Waste Connections, Inc.*, 922 F.3d 219, 223-34 (4th Cir. 2019) (cleaned up). As comparator evidence, Rodriguez offered evidence that Trogner refused to train women in her position but eagerly trained a specific man, Craig McCallister ("McCallister"). McCallister and Trogner performed similar work together, albeit on a different contract. However, in this case Trogner was Rodriguez's co-worker. He was not her supervisor. The comparator model does not fit for this case. Rodriguez may use this evidence along with other evidence for her more generalized circumstantial case of discrimination based on sex.

does not prohibit all verbal or physical harassment in the workplace; it is directed only at discrimination because of sex . . . The critical issue . . . is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.”).

Rodriguez testified that she never witnessed Trogner say anything discriminatory about women. (Tr. Day 2 PM 54:6-54:14; 90:3-11.) However, he refused to train her, belittled her, mocked her, intentionally left her off emails, and raised his voice at her. (Tr. Day 2 AM 27:3-20; 35:2-5; 28:16-22; 29:1-14; 36:9-16; 68-70:16; 106:20-22.) Trogner intimidated her. He hunched over her desk, gritted his teeth, and puffed his chest. (Tr. Day 2 AM 36:9-16; 37:12-17; 56:6-11; Tr. Day 2 PM 110:2-11.) As to other women, Rodriguez testified Trogner berated other women in front of employees and sent an aggressive email to another woman capitalizing all letters in red font. (Tr. Day 2 AM 78:1-21-79:9-20.) Michelle Kleepsies testified that Trogner treated her like an administrative assistant, left her off emails, dictated her work, and criticized her work that he then passed off as his own. (Tr. Day 1 PM 134:10-16; 136:15-18; 138:10-20; 141-142:1-14.) Louann Carlan testified Trogner was controlling towards her, kept information from her, talked rudely, abrasively, and aggressively towards her, told her what to do, ignored her, and criticized her work. (Tr. Day 4 AM 169:9-16; 175:1-2; 176:18-22; 177:1-11; 184:20-22.) Trogner would slam objects down in front of her when angry or frustrated. (Tr. Day 4PM 14:5-14.) He followed her down the hall while yelling at her and continuously pointing his finger at her. (Tr. Day 2 PM 132:19-22; 133:1-4.) Pam Hoss testified Trogner was bossy and tried to act like her supervisor after their male supervisor left and a female supervisor took over. (Tr. Day 4 PM 93:11-22; 94:1-9.) He was sarcastic with her, critiqued her work, and spoke over her. (Tr. Day 4 PM 94:10-19.)

These unprofessional acts warrant the parties joint disapproval. However, they do not amount to circumstantial evidence that his actions were because Rodriguez was a woman. For this point, Rodriguez offered evidence to show that Trogner did not behave the foregoing ways with other men to try to prove discriminatory animus. Two men—Russell and Park—testified that Trogner was never physically threatening towards them. (Tr. Day 3 PM 103:2-4; Day 4 PM 128:9-11.) As to training, Trogner trained a male SAIC employee, Craig McCallister, and was kind and engaging toward him. (Tr. Day 2 AM 80-81:17.) Michelle Kleepsies testified Trogner was friendly and “jokey” with men but not women. (Tr. Day 1 PM 143:11-19.) He would describe male employees as competent and females as incompetent. (Tr. Day 1 PM 143:11-19.) Louann Carlan testified Trogner was rude in answering female coworkers’ questions but not males. (Tr. Day 4 AM 188:12-16; 189:15-17.)

However, there was also evidence Trogner was “curmudgeonly” to everyone. (Tr. Day 3 PM 103:2-6.) Edwin Park testified Trogner was “equally disparaging to men and women.” (Tr. Day 4 PM 111:15-20.) Pam Hoss testified Trogner was “equally obnoxious and kind of a butthole to everybody [men and women].” (Tr. Day 4 PM 84:10-13.)

This conflict in the evidence would ordinarily be a matter for the jury. However, Rodriguez called as a witness in her case-in-chief Louanne Carlan, an employee of SAIC. (Tr. Day 4 AM 165:16 *et. seq.*) This triggered Virginia’s adverse party witness rule. *Colas v. Tyree*, 302 Va. 17, 26 (2023).

Carlan testified that 18 of 20 men on SAIC's contract complained about Trogner's conduct. (Tr. Day 4 AM 201:1-11.)⁸ Since Carlan was an employee at SAIC at the time of trial, she was testifying as an adverse party witness. *Id.* (employees of an adverse party are usually covered by the adverse party witness rule). Under the adverse party witness rule, Carlan's uncontradicted statements are binding on Rodriguez unless inherently improbable. *Id.* When a party calls an adverse party as her own witness, she assumes a significant burden, forcing the Court to serve as a filter for the adverse witness's testimony. The Court's task is to "sift what is uncontradicted from what is contradicted (or inherently incredible)" from the adverse witness's testimony. *Id.* at 28. The uncontradicted testimony is binding on the party calling the witness. *Id.* Courts apply this rule as a matter of law, not as fact for a jury to decide. *See, id.* The Supreme Court in *Colas* set aside a jury verdict based on this rule without remand. *Id.* at 34. The Court of Appeals recently reversed a bench verdict and entered final judgment for an appellant for the same reason. *Llewellyn v. White*, 2025 Va. App. LEXIS 411, Record No. 2077-23-2, 2091-23-2 (Jul. 22, 2025).

Carlan's testimony was that 18 of 20 men complained about Trogner. Rodriguez's other evidence did not contradict Carlan's testimony; it supplemented it. Most of Rodriguez's other evidence was testimony that Trogner treated some women hostilely and was nice to one man. Both parts of Rodriguez's evidence can be true at the same time without contradicting each other. Trogner could engage in poor conduct toward the women Rodriguez identified, be nice to the one man, and engage in poor conduct towards 18 of 20 other men. Rodriguez is now bound by Carlan's testimony that Trogner's conduct was poor toward those men. Thus, by calling Carlan as her witness, Rodriguez's evidence essentially became SAIC's argument—that Trogner was difficult with everyone, not just women.

Because *Rodriguez's own evidence* showed that Trogner was an equal opportunity harasser and was not hostile to Rodriguez because of her sex, SAIC's motion to strike should be granted. Rodriguez's evidence was sufficient for submission to the jury on the issue of the abusive work environment, but because of the application of the adverse party witness rule, her evidence could not prove it was not based on her sex. Therefore, SAIC's motion to strike on this basis should be granted.

B. Severe or Pervasive Harassment.

To be actionable, hostile conduct must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Ocheltree v. Scollon Prods.*, 335 F.3d 325, 333 (4th Cir. 2003). The victim must prove the work environment was both objectively and subjectively hostile. *See Fox v. GMC*, 247 F.3d 169, 178 (4th Cir. 2001). Parties prove objective hostility under "the totality of the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; . . . whether it unreasonably interferes with an employee's work performance;" and whether the alleged harasser is a supervisor or coworker. *Okoli v. City of Baltimore*, 648 F.3d 216, 220, 223 (4th Cir. 2011). When a plaintiff puts on evidence of continuous humiliating conduct that unreasonably interferes with the plaintiff's work performance, "there is ample support for the jury finding of severe or pervasive

⁸ On cross examination, Carlan testified that Trogner was unprofessional with four specific men: Rich Parker, Mike Walsh, Ray Gammon, and Derrick Spelhaug. (Tr. Day 4 PM 8:7-13:6.) The Court does not know if testimony elicited in cross examination falls under the adverse witness rule. If it does, this testimony further supports the Court's ruling in this Opinion Letter.

conduct sufficient to constitute a hostile work environment.” *Conner v. Shrader-Bridgeport Int’l, Inc.*, 227 F.3d 179, 199 (4th Cir. 2000).

Rodriguez’ testimony of her subjective feeling of hostility is sufficient for a jury to consider under that prong.

Under the objective prong, Rodriguez’s evidence is sufficient for a jury to consider the cause of action. Trogner’s hostile conduct occurred daily. (Tr. Day 2 AM 32:14-15.) Rodriguez frequently asked Trogner for training which he would ignore daily. (*Id.*) He refused to train her on tasks related to her job. (Tr. Day 2 AM 26:10-12, 28:6-15.) He left her off emails and hoarded information from her. (Tr. Day 2 AM 27:3-10, 35:2-5, 68-70.) He gave others her wrong contact information. (Tr. Day 2 AM 128-132.) He was effectively sabotaging her. Trogner frequently mocked or belittled Rodriguez. (Tr. Day 2 AM 32:14-15.) He raised his voice at her, got in her face, hunched over his desk, gritted his teeth, and puffed his chest. (Tr. Day 2 AM 36:9-16, 37:12-17, 56:6-11, Tr. Day 2 PM 110:2-11.) All this left her unable to do her job and made her feel dumb. (Tr. Day 2 AM 28:6-15.) In totality, a jury could conclude this evidence amounted to objectively severe or pervasive hostility. Trogner’s hostile behavior clearly interfered with her work performance. A person performs poorly when a co-worker leaves her off emails, gives others her incorrect contact information, ignores her, and hoards information from her.

The motion to strike on this basis should be denied.

C. Imputation to Employer.

An employer is liable for a hostile work environment if it “knew or should have known about the harassment and failed to take effective action to stop it by responding with remedial action reasonably calculated to end the harassment.” *Pryor v. United Air Lines, Inc.*, 791 F.3d 488, 498 (4th Cir. 2015) (cleaned up).

The evidence at trial showed SAIC knew of Trogner’s behavior and reacted to it. It separated him from Rodriguez. (Tr. Day 2 PM 49:3-51:20, 58:8-59:17; Day 3 AM 67:5-69:8, 76:5-77:11.) It instructed Trogner to be more professional and gave him a low merit pay rating, reducing his income. (Tr. Day 2 PM 80:3-13, 82:14-84:15; Day 3 AM 19:16-20:6, 150:15-154:3; Day 3 PM 16:6-17:13.) It reprimanded Trogner. (Tr. Day 3 PM 66:15-67:10.) It gave Rodriguez supervised training sessions. (Tr. Day 3 AM 70:6-74:20, 77:17-84:15, 126:3-138:19; 137:6-138:15; Day 5 68:20-72:9.) It facilitated Rodriguez’s transfer. (Tr. Day 3 AM 170:10-173:8.) The human resources department was involved. (Tr. Day 4 AM 109:1-137:20.)

Whether SAIC took effective action is a question of fact for a jury. The jury could certainly find SAIC took effective action to protect Rodriguez from Trogner’s harassment by responding with remedial action reasonably calculated to end the harassment. *Compare EEOC v. Xerxes Corp.*, 639 F.3d 658, 671 (2011). However, in this instance, the Court will not hold as a *matter of law* that the company did so. Whether SAIC took effective action is a fact matter for the jury.

The motion to strike on this basis should be denied.

III. CONCLUSION.

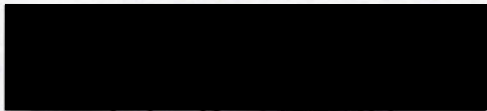
Rodriguez failed to present sufficient evidence to support one prong of her hostile work environment claim—that her employer subjected her to an abusive working environment based on her sex. The testimony of Louann Carlan, who testified in Rodriguez’s case-in-chief as an adverse party witness, proved fatal to her case under the adverse party witness rule. The reasons herein, SAIC’s Renewed Motion to Strike will be granted.

An appropriate Order is attached.

Kind regards,



David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia



Judge David A. Oblon

SEP 18 2025

Entered

**PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA,
ENDORSEMENT OF THIS ORDER IS WAIVED BY DISCRETION OF THE COURT. ANY DESIRED
ENDORSEMENT OBJECTIONS MAY BE FILED WITHIN TEN DAYS.**