

To Responsibly Rock Out At Work, Draft A Music Policy

By **Ally Coll** (October 6, 2023)

In June, the U.S. Court of Appeals for the Ninth Circuit issued a landmark decision in *Sharp v. S&S Activewear LLC*, holding that music can be a form of workplace harassment under Title VII of the Civil Rights Act, which prohibits employers from discriminating on the basis of sex.[1]

The lawsuit was brought by a group of former employees who worked in a 700,000-square-foot apparel warehouse and who alleged the company allowed management to routinely play sexually derogatory and misogynistic music throughout the workplace.



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The workers alleged that the music, in turn, "served as a catalyst for abusive conduct," leading to incidents where other employees "pantomimed sexually graphic gestures, yelled obscenities, made sexually explicit remarks, and openly shared pornographic videos."

The court held that music with sexually derogatory and violent content, played constantly and publicly throughout the workplace, can foster a hostile or abusive environment. According to the court's opinion, the music was blasted from commercial-strength speakers placed throughout the warehouse so loudly that it overpowered operational background noise. Employees occasionally even placed the speakers on forklifts and drove them around the warehouse, making it difficult for others to avoid the music.

Worse, the opinion also details how the employer refused to respond to its employees' complaints, which came from both men and women on an almost daily basis. Instead, they stood by the music and defended it as "motivational," even though it contained misogynistic slurs and descriptions of extreme violence against women.

In the wake of this decision, employers might be wondering whether it's safest to steer clear of playing any music in the workplace, in order to avoid a similar lawsuit.

As a music lover and someone who advises companies on how to create safe and harassment-free workplaces, I have good news for you: It's still okay to play most beats! Just make sure you do it respectfully, responsibly and in a way that doesn't make any employees feel demeaned, disrespected or otherwise excluded because of their race, gender or any other status protected by law.

So what does this mean practically for employers that want to offer a soundtrack for their employees' workday?

Actively monitor the music that is being played, and screen for lyrics or messages that contain offensive or lewd content.

Employers have a responsibility to make sure that any music they play, or allow employees in the workplace to play, doesn't contain lyrics or messages that are offensive or discriminatory.

Streaming services often include explicit content because listeners may want to hear songs in their original, uncensored form. But that doesn't mean that it's always appropriate for all

audiences — especially in a workplace. The good news is that some streaming platforms easily allow you to filter explicit content and substitute in clean versions, where available.

Keep in mind that even nonexplicit content can contain problematic language or themes, so employers should review workplace music to ensure that it isn't sending a harmful or offensive message.

Employers should also be aware that as leaders in their organizations, they set the tone from the top. If any member of the leadership team is playing music with explicit lyrics, racial epithets, sexual innuendos or slurs, other employees may feel permitted to do the same, while others may feel uncomfortable. As a leader, ensure that your personal music choices in the workplace set the standard for acceptable behavior.

Make sure employees and customers feel comfortable reporting issues, and take appropriate steps to address reports that come in.

Music can set a certain tone for your workplace or business, and in most cases that's not just fine — it's desirable! A spa might play a stress-relief playlist to create a calm and soothing atmosphere ahead of a massage treatment. On the other hand, a spin studio might pump a cardio playlist to motivate cyclists to break a sweat. Both uses of music are appropriate and encouraged — as long as they aren't making anyone feel disrespected or unwelcome.

How do you know if your music has crossed the line? In most cases, people will tell you — as long as you have a good mechanism set up for receiving feedback and complaints. Creating a "speak up" culture in your workplace, where employees feel empowered to let you know if something is wrong, is critical, whether you choose to play music or not.

According to the Equal Employment Opportunity Commission, 70% of people who experience workplace harassment do not speak to a manager, supervisor or union representative about it.[2] A 2018 survey of 7,000 legal professionals by the International Bar Association found that one major reason workplace bullying or inappropriate behavior isn't reported is a belief that the behavior is perceived as acceptable.[3]

Another reason is employees' fear of retaliation for reporting workplace problems. This concern can be addressed by creating anonymous reporting channels.[4]

In the Sharp case, employees did take the courageous step of notifying their supervisors that the music was offensive, but management did nothing about it. That's why, in addition to ensuring employees have clear ways — with anonymous options — to report misconduct, it's important to create transparent investigation and corrective action policies.

The more confident employees are that their workplace will take appropriate action, the more likely they are to report issues up the chain.

Review your company's code of conduct and other written policies to ensure they set clear expectations.

In order to avoid issues in the first place, it's best for leaders to create clear written policies to ensure all company employees know where the lines are. Transparency is critical to creating shared norms, building trust and establishing accountability with your employees. Studies show that when workplaces lack specific harassment policies, employees report experiencing higher levels of harassment.[5]

When building a music policy, consider referencing workplace alcohol policies. Alcohol policies usually explicitly indicate the amount, times and places it is acceptable to drink, as well as the importance of not pressuring others to partake. Think about whether there are times or locations where no music is permitted, what your organization defines as unacceptable when it comes to musical choices, and whether employees may play music out loud or must use earbuds.

Once defined, it's important to train employees on these new policies and to reinforce expectations. This can be as simple as including the topic in your annual anti-harassment training, then taking five minutes at staff meetings to review the music policy every few months to remind employees what is appropriate and allow them to ask clarifying questions.

Conclusion

Workplaces should be fun and inspiring — but they need to be so for everyone. If music that is motivational to one person or group makes others feel demeaned, it's not appropriate for the workplace.

Making sure your employees know how to rock out responsibly will help keep your workforce happy and your business thriving.

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[1] Sharp et al v. S&S Activewear LLC, 69 F.4th 974.

[2] <https://www.eeoc.gov/select-task-force-study-harassment-workplace>.

[3] <https://www.ibanet.org/MediaHandler?id=B29F6FEA-889F-49CF-8217-F8F7D78C2479>.

[4] <https://hbr.org/2020/10/do-your-employees-feel-safe-reporting-abuse-and-discrimination>.

[5] <https://www.ibanet.org/MediaHandler?id=B29F6FEA-889F-49CF-8217-F8F7D78C2479>.