The Equal Opportunity Jerk

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Although much of the egregious conduct seen in sexual harassment lawsuits a decade ago now has been rooted out of the workplace, the definition of "harassment" continues to expand. One growing type of harassment claim involves bosses who are mean, rude, condescending, or who yell at subordinates, but who do not use racial or gender epithets in their tirades. Thus far, the law has developed to hold that this is not illegal so long as the boss is mean to everybody. Some employees have sought to avoid this unfavorable law by invoking the Americans with Disabilities Act and saying, essentially "My boss made me crazy and I need a new boss as a reasonable accommodation." These claims are mostly failing as well. One danger area, however, involves employer policies against harassment that are broader than they need to be. Policies that do not just prohibit unlawful harassment but that go on to prohibit "all forms of harassment" in the workplace may become the basis for a breach of contract lawsuit by an employee victimized by a "mean" boss. The author observes the "reality that the workplace can sometimes be a harsh and unfriendly environment. The boss may well be a jerk. Employees may well be treated unfairly, spoken to in uncivil terms, or humiliated in the presence of co-workers. Supervisory expectations may be unreasonable and performance evaluations may be harsh and unjust. All of this may well cause emotional upset, at the very least. It's surely not nice, but it's not necessarily illegal. Given the movement to provide a remedy for every wrong and salve for every emotional wound, however, just how long the courts will continue to see it this way is a bit unclear."

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