U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

[redacted]
Taryn S.,[1]
Complainant,

v.

Peter O'Rourke,
Acting Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Appeal No. 0120162172

Agency No. 200P-0612-2015102987

DECISION

On June 20, 2016, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's May 25, 2016, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission REVERSES the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Medical Support Assistant in the Department of Veterans Affairs (VA) Northern California Health Care System at the Chico Outpatient Clinic in Chico, California. On June 3, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (Caucasian), sex (female), disability (Bi-Polar Disorder), and reprisal (opposing sexual harassment and participation in the present EEO complaint) when:

> (1) on April 14, 2015, the physician for the Primary Care Women's Health Clinic (GYN) threatened Complainant when he gave her a hug, forcibly grabbed her neck, kissed her with

[1] This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

his tongue, grabbed the belt loops of her pants, and told her she was turning him on and they needed to get together;

(2) on April 17, 2015, a Supervisory Medical Support Assistant (S1) informed her that a Human Resources Specialist (HRS) directed her (S1) to provide information from Complainant's medical records;

(3) on April 22, 2015, she was belittled when a Social Worker (SW) informed her that the Administrative Officer/Patient Advocate (PA) commented to him that she (PA) heard that SW was intimate with Complainant;

(4) on May 18, 2015, she was belittled when informed from a VA police report that a Physician Manager (the Director) stated that Complainant was an unstable person who might be making the sexual harassment complaint to get time off from work;

(5) on May 18, 2015, she was belittled when informed from a VA police report that a nurse (LVN) stated that Complainant was cutesy and flirty with GYN; and the previous summer, Complainant went to GYN's office, stated that she had something to show him, and subsequently pulled her pants down;

(6) on May 18, 2015, a Nurse Manager (NM) threatened Complainant with disciplinary action for contacting other nursing and clinical staff regarding her claims;

(7) on May 18, 2015, she was belittled when informed from a VA police report that LVN stated that Complainant was attracted to GYN because he was young and successful;

(8) on May 18, 2015, she became aware from a VA police report that LVN accused Complainant of setting up GYN because she was lazy, did not want to work, and was looking for a way out; and

(9) on May 18, 2015, she became aware from a VA police report that LVN stated that Complainant's ex-husband was African-American and that her son was mixed-race.

After the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

PROCEDURAL DISMISSAL

All claims were accepted and investigated. However, in its final decision, the Agency dismissed claims 4, 5, 7, 8 and 9, pursuant to 29 C.F.R. § 1614.107(a)(1), on the basis that these claims constitute a collateral attack on another proceeding since these allegations challenge the investigation and subsequent findings of an independent police report.

We disagree with the Agency's dismissal. The record clearly shows that Complainant is not asserting an attack on any other proceeding (i.e., the decision not to criminally prosecute GYN). Rather, the record shows that claims 4, 5, 7, 8 and 9 pertain to Complainant's assertion that management officials and co-workers engaged in retaliatory conduct by spreading false rumors, sharing her personal medical information and threatening discipline to thwart the investigation of Complainant's sexual harassment complaint.

FACTUAL BACKGROUND

Reports of Sexually Inappropriate Conduct to Chico VA Management

The record establishes GYN was employed at the VA in the Chico Outpatient Clinic from approximately February 2014 until May 20, 2015. During GYN's tenure at the Chico VA, there were numerous reports of sexually inappropriate conduct. In April or May 2014, an employee (Employee A) (female) sought EEO counseling after she alleged that GYN had placed his arm around her and massaged her shoulder. Employee A also alleged that GYN leered at her, looked her up and down and refused to let her pass through a doorway while making the comment, "[w]ill you let me pat you down?" The EEO Manager (EEOM) investigated Employee A's allegations and found them to be substantiated. During mediation, the complaint was resolved after GYN apologized for his behavior. GYN was also required to attend sensitivity training.

In approximately June 2014, a female housekeeper employee (HE) sought EEO counseling and requested to be reassigned to another location so that she would not have to clean GYN's office. HE alleged that GYN invited her to his house for dinner. After she arrived, HE became uncomfortable and asked to go home after she realized that GYN expected to have sex with her. When EEOM discussed the allegations with the Director (the Chico Clinic Physician Manager), he was instructed not to investigate it. Although EEOM expressed his disapproval of the Director's decision, he was told that the Human Resources department (HR) would handle it. However, the record is devoid of evidence that it was ever addressed by HR.

Within the first four months of GYN's employment with the VA there were several additional incidents. One VA female employee (Employee B) reported to NM that GYN made suggestive comments and gestures toward Employee B's 16-year-old daughter while the daughter babysat GYN's children. Employee B notified NM that GYN sat on a bed with her daughter while making suggestive comments and gestures. To protect her daughter, she told NM that she no longer allowed her daughter to babysit GYN's children.

A VA female patient (P1) reported to NM that GYN behaved inappropriately during his exam of the patient. P1 told NM that GYN did a breast exam while she was standing up and that he grabbed her at her waist. P1 described the exam as being "felt up." P1 also told NM that GYN took too much time examining her vagina and asked her strange questions like: "Can you feel that?" Additionally, the patient reported that GYN sniffed his hands after removing his fingers from her vagina after performing a pelvic examination without wearing gloves. P1 described GYN as "gross," "creepy," and "Uncle Creepy." P1 requested another physician.

Another female patient (P2) who was also an employee of the VA complained about GYN after he gave her a physical exam. P2 requested another doctor. Another female patient/employee (Employee C) complained that GYN was weird and she did not want to go back to see him and requested another doctor. In response to these incidents. GYN's supervisor (the Director) verbally counseled GYN in NM's presence. NM told the VA police that after the first couple of complaints, GYN was directed not be in a room alone with female patients. He was also instructed to stop doing "Manipulative" pelvic exams and breast exams. He was told to use ultrasounds and mammograms instead. When asked if providing a manipulative exam, the way GYN had explained it to the Director, was common, NM replied that she had never had that done or seen it done.

Shortly after the verbal counseling, the Director learned of more incidents of alleged inappropriate behavior. Specifically, a VA employee (Employee D) reported to NM that GYN rubbed her pregnant belly as she walked past him. Employee D reported that she felt uncomfortable with GYN's conduct. Another female patient (P3) complained to the PA that GYN discussed his sexual exploits during her medical appointments and had persistently called the patient's sister to ask the sister out to dinner. P3 perceived GYN's conduct as inappropriate and requested another physician. Following these incidents, GYN received a written counseling in which NM served as a witness.[2]

PA received a complaint from a patient (P4) who complained that GYN was treating her more like a "buddy" than a patient. GYN had made suggestions that they go out for drinks and go clubbing together. P4 did not give more information but wanted a different provider.[3]

Incident Involving GYN and Complainant[4]

On April 14, 2015, Complainant visited the Outpatient Clinic on her break to receive a tri-monthly birth control injection, called a "Depo shot." Complainant needed a pregnancy test to confirm she was not pregnant before she could get the Depo shot because it was over 14 weeks since her last Depo shot. While she did not have an appointment to see GYN, she dropped by his office to see if he could order a pregnancy test for her.
GYN closed his office door and asked Complainant whether she needed a pregnancy test because she had unprotected sex.
In response, she told him that she had not been sexually active.

[2] The record does not contain the written counseling.
[3] It is not clear from the record when this complaint was brought to PA's attention.
[4] The following is Complainant's account of the events on April 14, 2015.

GYN told Complainant that she was glowing and turning him on. As Complainant started leaving, GYN asked her for a hug. As Complainant attempted to give GYN a platonic hug, he held on to her for longer than appropriate and then grabbed the back of her neck, kissed her on the lips, and forced his tongue into her mouth. When Complainant pushed him away, GYN grabbed her belt loop and pulled her towards him. Complainant hit GYN in the chest. Complainant asked him what he was doing and reminded him that his wife worked for the VA. GYN responded by stating that Complainant was turning him on. Complainant stated: "what the f___ was wrong with you" and told him that his wife was gorgeous. GYN told her not to judge a book by its cover. Complainant left GYN's office and went to the laboratory to receive the pregnancy test. After receiving her negative test, she attempted to visit GYN's nurse (LVN) to receive her injection. LVN was in another room treating a patient. GYN saw Complainant and said: "get in here and shut the door." Complainant stood near the door and responded, "No. I'm good." GYN asked Complainant whether she had completed her pregnancy test and she told him that she had. GYN shut the door and stated, "[w]e really need to hook up." GYN responded by stating that Complainant would not be seeing the guy again until June and they had plenty of time to hook up. When Complainant reminded GYN that he was her doctor, he told her that they should get together because he was deploying soon and they could still get together. LVN approached and Complainant then left to receive the injection from her.

After receiving her injection, Complainant returned to her office visibly upset. A co-worker (CW-1) asked her why she appeared to be upset. Complainant told her about the incident with GYN. CW-1 encouraged Complainant to report the incident to management. The next day, Complainant reported the incident to her direct supervisor (S1). Complainant was visibly upset when she reported the incident. Although Complainant did not want to report the incident to anyone other than S1, S1 encouraged her to report the incident and said that she would support her through the process. S1 reported the incident to her supervisor (S2). S2 informed her that she (S1) needed to contact HR and the VA police. S1 reported the incident to the VA police.

On April 20, 2015, Complainant contacted an Agency EEO counselor to report the incident. On June 3, 2015, Complainant filed a formal EEO complaint with the Agency.

On April 17, 2015 and April 30, 2015, police investigators interviewed GYN. During the first interview, GYN confirmed that during the office visit, he had told Complainant that she was glowing. He also said that he may have hugged her. During the first interview, GYN denied kissing Complainant, stating the following: "I am not saying that she is not beautiful but I see her for her women's health. I did her pap smear not long ago. I just don't see her that way." During the second interview, GYN agreed to take a polygraph test. The initial results of the polygraph revealed that it was probable that GYN was being deceptive about his interactions with Complainant. After one of the police officers showed GYN the polygraph test results, he admitted that when he hugged Complainant, he held her longer than he should have and looked into her eyes.

After initially denying that the hug was "intimate," he later admitted that it was. GYN also admitted to telling Complainant that she was "such a bad girl" which he described as "stupid." GYN also admitted to telling Complainant that she was glowing and that she was turning him on.

On May 5, 2015, an officer forwarded a report of the investigation of GYN's conduct to an Assistant United States Attorney (AUSA). The next day, an AUSA declined to prosecute the case and the VA police investigation of Complainant's harassment allegation was subsequently closed.

On May 8, 2015, Complainant notified the VA police that she had learned that GYN had sexually harassed Employee E. On May 13, 2015, Employee E communicated to an officer about her experiences with GYN.[5] Specifically, Employee E told the officer that GYN complained about his wife and asked Employee E out on dates over and over. Employee E rejected him numerous times and GYN constantly demanded explanations for the rejections. Employee E explained that having to constantly reject him became "burdensome." Employee E also stated that over months, GYN's behavior became more bold and aggressive. He started asking her for "cordial hugs" which she thought was part of his Nigerian culture. However, the hugs became longer and inappropriate. On one occasion, GYN hugged her and kissed her as she started to pull away from him. Employee E told the police officer that she was disgusted with GYN's behavior and told him that the kiss was inappropriate. Employee E stated that she wanted GYN to leave her alone but felt it was hopeless because he would not accept that she simply did not like him. She also stated that she knew he was moving to Texas and felt she had to wait for him to be gone. [6]

Disclosure of Medical Information

On April 17, 2015, HRS requested that S1 provide her with information from Complainant's medical records. Specifically, HRS called S1 for verification that GYN treated Complainant on the day of the incident. S1 looked up Complainant's medical records and told HRS that an order had been placed by GYN on April 14, 2015 (i.e., the day of the incident).

Employee Accusations and False Rumors about Complainant

On April 17, 2015, a police investigator met with LVN who told him that Complainant was "flirty and cutesy" with GYN. LVN also told the police investigator that Complainant went to GYN's office the previous summer to tell him that she had something to show him and subsequently pulled her pants down. LVN accused Complainant of "setting up" GYN because she was "lazy, did not want to work, and was looking for a way out." In addition, LVN informed the police investigator that Complainant's ex-husband is African-American and her son is half African-American. LVN further stated that she believed Complainant might have been attracted to GYN because he was young and successful. The Director was also interviewed that day and told the officer that Complainant was an unstable person who may have been making the claim to get some time off.

On April 22, 2015, a VA Social Worker (SW) informed Complainant that PA had told him that she heard a rumor that SW and Complainant were having sex. Complainant believed that PA was attempting to ruin her personal and professional reputation because she had complained about GYN.

[5] The record does not address whether Employee E reported GYN's conduct to any management official prior to May 5, 2015.
[6] It is unclear from the record when Employee E's experiences with GYN occurred.

Employee E told Complainant that she overheard nurses discussing Complainant and stating that her sexual harassment complaint against GYN was bogus and that Complainant was not credible. However, Employee E believed Complainant because GYN had behaved inappropriately with Employee E as well.

On May 18, 2015, NM sent Complainant an email with a subject "Harassment in the Workplace." The email stated the following:

> It has been brought to my attention by multiple Nursing and Clinical Staff that you are contacting them during and after work hours to discuss a CONFIDENTIAL situation. You have been asked, several times, by your supervisor and the investigators as well as the VA Police not to discuss this matter with anyone. As acting CHICO Site-Manager, I am notifying you that this is borderline harassment and will begin progressive counseling, should this happen again as this is inappropriate and unacceptable. I have cc'd your continued efforts of communication to the United States Department of Veterans Affairs Police, your supervisor, the Chief of Human Resources and NCHS Chief of Service. This is an ongoing investigation where there should be no information discussed or involving any Chico Opc Staff employees.

On June 3, 2015, the VA Police obtained a new witness statement from one of GYN's female patients (P5). P5 told a VA police officer that GYN treated her once between January and February of 2015. P5 stated that during that visit she was attempting to describe an injury that occurred while she was in the military and GYN interrupted and said: "You are so beautiful you are distracting me." P5 was offended by GYN's lack of attention to her medical history. P5 advised she thought it was rude but never reported it until "all the other patients" told her there was an investigation and she should get involved.

AGENCY DECISION

In addition to dismissing Claims 4, 5, 7, 8 and 9, the Agency concluded that Claims 1-3 were unsupported by evidence. Specifically, pertaining to the sexual harassment claim, the Agency asserts that Complainant testified that there were no witnesses to any of GYN's alleged comments or inappropriate conduct and Complainant failed to provide any evidence to corroborate her allegations. The Agency also found that the record establishes that PA did in fact comment to SW that she heard SW was intimate with Complainant; and SW, in turn, relayed this information to Complainant. However, the Agency, nevertheless, concluded that Complainant was not aggrieved by this incident because she did not suffer a personal loss or harm with respect to a term, condition or privilege of employment.

In addition, the Agency concluded that it was an isolated, one-time incident which was not sufficiently severe or pervasive to create a hostile work environment for a reasonable person. The Agency also concluded that even if Complainant established a prima facie case of sexual harassment, the evidence in the present case nevertheless revealed that Complainant's supervisor took immediate and appropriate corrective action when Complainant notified her of the alleged sexual harassment.

With respect to Claim 2, the Agency asserted that the evidence shows that the information obtained by HRS did not pertain to Complainant's medical condition, diagnosis, symptoms, or history. Rather, it pertained only to whether Complainant met with GYN on the day in question. Therefore, the Agency concluded that S1 did not improperly disclose confidential medical information and did not violate the Rehabilitation Act. The Agency further concluded that Complainant had not shown that the incident alleged in Claim 3 was reasonably likely to deter Complainant or others from engaging in protected activity.

ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

Complainant did not avail herself of a hearing. Therefore, we must make credibility determinations, on the record, without the assistance of a neutral EEOC AJ's personal observations of witness demeanor and tone. Wagner v. Dep't of Transp., EEOC Request No. 0120101568 (Aug. 23, 2010); Miller v. Dep't of Veterans Affairs, EEOC Appeal No. 0120093073 (June 6, 2011). We find Complainant's version of events credible. She made statements to several different people (at the time of the incident and several days/months after the incident) who all confirm a consistent account by Complainant. In addition, CW-1 and S1 confirm that Complainant was visibly disturbed by the events on April 14, 2015, which further corroborates Complainant's account.

In addition, contrary to the Agency's reliance solely on GYN's affidavit, his statements to the VA Police investigators were inconsistent and he ultimately admitted to many of the inappropriate statements and conduct alleged by Complainant. In addition, the record shows that GYN previously engaged in similar behavior, including forcibly kissing women against their will, which further corroborates Complainant's account. Accordingly, although there were no witnesses during the incident with Complainant, we conclude that Complainant's account is credible and find GYN's denials unconvincing.

Sexual Harassment – Claim 1

To establish a claim of sexual harassment, Complainant must show that: (1) she belongs to a statutorily protected class; (2) she was subjected to unwelcome conduct related to her sex, including sexual advances, requests for favors, or other verbal or physical conduct of a sexual nature; (3) the harassment complained of was based on sex; (4) the harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer, in other words, did the agency know or have reason to know of the sexual harassment and fail to take prompt remedial action. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir.

1982); Humphrey v. U.S. Postal Serv., EEOC Appeal No. 01965238 (Oct. 16, 1998). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the complainant's circumstances. Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 (Mar. 8, 1994); see also Jenna P. v. Dep't of Veteran Affairs, EEOC Appeal 0120150825 (Mar. 9, 2018).

The Commission has found that under certain circumstances, a single, isolated incident could be severe or pervasive enough to give rise to a hostile environment in and of itself. See Trina C. v. U.S. Postal Serv., EEOC Appeal No. 0120142617 (Sept. 13, 2016) (male supervisor grabbed female employee around the waist and kissed her on the neck); Woolf v. Dept. of Energy, EEOC Appeal No. 0120083727 (Jun. 4, 2009), req. for recon. den., EEOC Request No. 0520090560 (Aug. 21, 2009) (male coworker forced his thigh between female employee's legs, put his mouth to her ear, and told her how gorgeous she looked); Hayes v. U.S. Postal Service, EEOC Appeal No. 01954703 (Jan. 23, 1998), req. for recon. den., EEOC Request No. 05980372 (Jun. 17, 1999) (male coworker stuck his tongue in female employee's ear); Renee L. v. Dep't of Commerce, EEOC No. 0120141032 (Mar. 29, 2017); Bailin v. Soc. Security Admin., EEOC No. 0120080181 (July 14, 2011); see also Policy Guidance on Current Issues of Sexual Harassment, N-915-050, No. 137 at 15-16 (March 19, 1990) (The Commission will presume that the unwelcome, intentional touching of a charging party's intimate body areas is sufficiently offensive to alter the conditions of her working environment and constitute a violation of Title VII).

Elements 1-4 – Unwelcome and Offensive Sexual Advance Created Offensive Work Environment

We find that GYN's act of hugging Complainant then forcibly grabbing her neck, kissing, inserting his tongue into her mouth, grabbing the belt loops of her pants, telling her she was turning him on, and persistently asserting that he wanted to have sex with her constitutes overt sexual bodily contact that rises to the level of a hostile work environment, as did the conduct at issue in the cases cited above. Complainant, a female, is a member of a statutorily protected class. Clearly, GYN's conduct was motivated by Complainant's sex. We note that the record establishes that the sexual advance by GYN caused Complainant to feel embarrassed, humiliated, and nervous. She was visibly upset immediately following the sexual advances and remained so for weeks following the incident.

Element 5 – Agency Liability

We now turn to whether there is a basis for imputing liability to the Agency. In the case of co-worker harassment, an agency is responsible for acts of harassment in the workplace where the agency (or its agents) knew or should have known of the conduct, unless it can be shown that it took immediate and appropriate corrective action. See Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, No. 915.002 (June 18, 1999); Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

In Faragher, the Court further noted and declined to disturb the general agreement among circuits that a negligence standard governs employer liability for a co-worker's harassment. Id. at 799–801.

The complainant must clear a higher hurdle under the negligence standard, where she bears the burden of establishing her employer's negligence, than under the vicarious liability standard, where the burden shifts to the employer to prove its own reasonableness and the plaintiff's negligence. See Shaw v. AutoZone, Inc., 180 F.3d 806, 812 n. 2 (7th Cir.1999); Curry v. D.C., 195 F.3d 654, 660 (D.C. Cir. 1999). Title VII adopts ordinary tort principles of negligence in evaluating employer liability for co-worker sexual harassment and an employer may be negligent, although it did not have actual notice, if it reasonably should have anticipated the harassment, i.e., if it had constructive notice. Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

An employer's knowledge that the harasser had harassed people other than the complainant could be relevant to whether the employer had constructive notice of the dangerousness of the employee. See Kramer v. Wasatch Cty. Sheriff's Office, 743 F.3d 726, 756 (10th Cir. 2014) citing Hirase–Doi v. U.S. West Communications, Inc., 61 F.3d 777, 783–84 (10th Cir.1995) (Employer had constructive notice of sexual harassment because the harasser had practiced widespread sexual harassment in the office). See Hawkins v. Anheuser-Busch, Inc., 517 F.3d 321, 339–40 (6th Cir. 2008) citing Dees v. Johnson Controls World Servs., Inc., 168 F.3d 417, 423 (11th Cir.1999) (Knowledge of prior acts of harassment can support a claim that the employer had constructive knowledge of later acts by the same employee); see also Watson v. Blue Circle, Inc., 324 F.3d 1252, 1259 (11th Cir. 2003) (Constructive notice is established when the harassment was so severe and pervasive that management reasonably should have known of it.)

Agency Had Constructive Knowledge of the Sexual Harassment

The record is clear that both the Director and NM were aware of numerous complaints against GYN regarding acts of sexual misconduct and harassment prior to the incident with Complainant. The earliest complaint of sexual misconduct at the Chico VA occurred in April 2014 (i.e., an entire year prior to the events at issue herein). According to NM's statements to the VA Police, the Director possesses written documentation pertaining to each complaint in his files. While these records are not included in the EEO investigative report, NM's statement provides sufficient evidence to show that the Director was aware of each complaint and was on notice that GYN was a danger to patients and employees at the Chico VA.

In addition to the Director, NM provided the facts of each complaint and indicated that she was aware of the complaints when they were reported. Both the Director and NM have supervisory functions and were aware of GYN's propensity for sexual misconduct. In addition to the Director and NM's knowledge, the record shows that EEOM, the Director and individuals in HR were aware of at least some of the complaints noted above. The Director even instructed EEOM not to investigate one of the complaints because he wanted HR to handle it. Given these facts, we find that the Agency reasonably should have anticipated the sexual harassment that Complainant endured.

Agency Failed to Take Immediate and Appropriate Corrective Action Before Incident with Complainant

The remedial action taken by the agency must be prompt and reasonably calculated to end the harassment. Id. What is appropriate remedial conduct will necessarily depend on individual facts of the case, such as the severity and persistence of the harassment and the effectiveness of any initial remedial steps. See Taylor v. Dep't. Of Air Force, EEOC Request No. 05920194 (July 8, 1992). However, when an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should investigate promptly and thoroughly. Policy Guidance on Current Issues of Sexual Harassment, N-915-050 (March 19, 1990). The employer should take immediate and appropriate corrective action by doing whatever is necessary to end the harassment, make the victim whole by restoring lost employment benefits or opportunities, and prevent the misconduct from recurring. Id. Disciplinary action against the offending supervisor or employee, ranging from reprimand to discharge, may be necessary. Generally, the corrective action should reflect the severity of the conduct. Id.; see also Rockymore v. U.S.Postal Ser'v., EEOC No. 0120110311 (Jan. 31, 2012). The employer should make follow-up inquiries to ensure the harassment has not resumed and the victim has not suffered retaliation. See Quintero v. United States Postal Service, EEOC Appeal No. 01960836 (April 21, 1998).

The record establishes that the Agency failed to take immediate and appropriate corrective action in the case before us. The record shows that the Agency settled a sexual harassment complaint by Employee A in or about April 2014. GYN was required to apologize for his behavior and attend sensitivity training. After participating in sensitivity training GYN's sexual misconduct continued. The Director then verbally counseled GYN and instructed him not be in a room alone with female patients. He was also instructed to stop doing "Manipulative" pelvic exams and breast exams. Soon after the Agency's second attempt at corrective action, the Director and NM learned of more incidents of sexual misconduct. The Agency's next attempt at corrective action was to issue GYN written counseling. This third attempt at corrective action was not effective because GYN continued to engage in sexual misconduct including the sexual harassment of Complainant.

The record shows that the Agency's attempt at corrective action throughout the period before the incident with Complainant was ineffective. Not only did the Agency do very little to correct GYN's conduct, the evidence shows that the Director (on at least one occasion) affirmatively instructed EEOM not to investigate one of the complaints, effectively preventing an EEO inquiry that might have resulted in protective steps to prevent future misconduct and harassment. See Ferris v. Delta Air Lines, Inc., 277 F.3d 128, 136 (2d Cir. 2001). The Agency's inadequate attempts at corrective action failed to prevent the sexual harassment that Complainant endured.

Agency Failed to Take Immediate and Appropriate Corrective Action After Incident with Complainant

Even after learning of GYN's actions toward Complainant on April 14, 2015, the Agency failed to take immediate and appropriate corrective action. The record shows that after notifying S1 of the sexual harassment by GYN, S1 and S2 referred the matter to both HR and the VA Police. The record shows that the VA Police investigated Complainant's allegations to determine whether to pursue criminal charges.[7] However, there is no indication whatsoever that the Agency conducted its own internal investigation into Complainant's serious allegations.

Immediately after notifying S1 of the sexual harassment, Complainant was instructed not to go to Building 280 where GYN worked. While Complainant did not need to access GYN's building to perform her work, she did normally access the building for medical treatment and the collection of mail. S1 advised Complainant that the mail would be delivered to her building (Building 284) and S1 would assist her with anything else she may need so that she did not have to enter Building 280. There is no suggestion in the record that GYN was ever instructed to stay away from Complainant. NM told the police investigator that on April 23, 2015, the Director counseled GYN in response to the incident with Complainant, but NM was not present for that counseling session. In addition, NM told the police investigator that the Director took GYN off the Women's Health Panel and required him to have a nurse chaperone for every patient until the "issue" was resolved.

The record shows that the Agency was aware of inappropriate sexual conduct by GYN toward both patients and co-workers outside the patient-doctor relationship. Moreover, the record is devoid of evidence that the Director's counseling was placed in GYN's personnel file. The undisputed record also shows that GYN left the VA without incident; free to continue performing his work in women's healthcare at the Department of the Army with a clean slate. The facts before us clearly show that the Agency's attempt to address the sexual harassment was woefully inadequate to correct the conduct and ensure it does not recur. See Rockymore v. U.S. Postal Serv., EEOC No. 0120110311 (Jan. 31, 2012) citing Colev v. U.S. Postal Serv., EEOC Appeal No. 0120062109 (Apr. 11, 2008) (finding that a two-week delay in responding to an employee's claim of harassment was not appropriate, especially given the history of ineffective attempts at corrective action); Guess v. Bethlehem Steel Corp., 913 F.2d 463, 465 (7th Cir. 1990) (employer acts unreasonably either if it delays unduly or if the action it does take, however promptly, is not reasonably likely to prevent the misconduct from recurring); Bacon v. Art Inst. Of Chicago, 6 F.Supp.2d 762, 767 (N.D. ILL. 1998).

Accordingly, for the reasons set forth above, we REVERSE the Agency's final decision and find that Complainant has established, by a preponderance of the evidence, that the Agency is liable for the sexual harassment that she endured on April 14, 2015.

Retaliation – Claims 2-9

[7] The investigation was initially closed on April 21, 2015. However, the VA Police obtained additional interviews and referred the case to the prosecutor on May 6, 2015. The prosecutor declined to pursue criminal charges against GYN.

Complainant may establish a prima facie case of reprisal by showing that: (1) she engaged in protected activity; (2) the Agency was aware of the protected activity; (3) subsequently, she was subjected to adverse treatment by the Agency; and (4) a nexus exists between the protected activity and the adverse treatment. Whitmire v. Dep't of the Air Force, EEOC Appeal No. 01A00340 (Sept. 25, 2000). A nexus may be shown by evidence that the adverse treatment followed the protected activity within such a time and in such manner that a retaliatory motive may be inferred. See Clay v. Dep't of the Treasury, EEOC Appeal No. 01A35231 (Jan. 25, 2005); Dominica H. v. Dep't of Health and Human Ser'v., EEOC No. 0120150971 (Nov. 22, 2017).

The Commission has a policy of considering reprisal claims with a broad view of coverage. See Carroll v. Dep't of the Army, EEOC Request No. 05970939 (April 4, 2000). Under Commission policy, adverse actions need not qualify as "ultimate employment actions" or materially affect the terms and conditions of employment to constitute retaliation. EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 § II.B(2) (August 25, 2016). The statutory retaliation clauses prohibit any adverse treatment that is based upon a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity. Lindsey v. U.S. Postal Serv., EEOC Request No. 05980410 (Nov. 4, 1999).

Retaliation claims occur under three circumstances: (1) where the plaintiff suffered from some type of adverse employment action (as discussed above); (2) where the plaintiff was subject to retaliatory harassment by a supervisor; and (3) where the plaintiff suffered from retaliatory harassment by coworkers. See Morris v. Oldham Cnty. Fiscal Court, 201 F.3d 784, 792 (6th Cir. 2000); Hawkins v. Anheuser Busch, Inc., 517 F.3d 321, 346 (6th Cir. 2008).

Coworker Retaliatory Harassment

Complainant's alleges that coworkers and other employees with supervisory authority engaged in conduct to harass and dissuade her from pursuing her claims of sexual harassment against GYN. In order to establish retaliatory harassment, under which an employer is liable for an employee's coworker's actions (in addition to showing that the harassment is motivated by protected EEO conduct), Complainant must show that: (1) the coworker's retaliatory conduct is sufficiently severe so as to dissuade a reasonable worker from making or supporting a charge of discrimination; (2) supervisors or members of management have actual or constructive knowledge of the coworker's retaliatory behavior; and (3) supervisors or members of management have condoned, tolerated, or encouraged the acts of retaliation, or have responded to the plaintiff's complaints so inadequately that the response manifests indifference or unreasonableness under the circumstances. Hawkins v. Anheuser Busch, Inc., 517 F.3d 321 (6th Cir.2008); See Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53, 68 (2006); see also, Owen v. Peake, 2008 WL 4449011, at 4 (S.D. Ohio 2008); Satterfield v. Karnes, 736 F. Supp. 2d 1138, 1170 (S.D. Ohio 2010).

EEO Activity was Motivating Factor in False Rumors and Attempts to Discredit Complainant and Protect GYN

Complainant notified S1 of the sexual harassment on April 15, 2015 and initiated EEO contact on April 20, 2015.

The record indicates that the Director and NM received information regarding Complainant's allegations from either the EEO office, HR, or directly from the VA Police during the days and weeks following the reporting of the sexual harassment. In addition, sufficient evidence in the record supports the conclusion that additional co-workers had learned about the sexual harassment allegations during the days and weeks after the incident from various sources, including the Director, NM, police investigators, and employees who were questioned by the VA Police.

The record shows that within days of notifying S1 of the sexual harassment, Complainant began to feel a concerted effort by her co-workers to harass her and thwart her efforts to pursue her complaint of sexual harassment against GYN. Complainant notified her EEO counselor about retaliatory harassment that started on April 17, 2015 (i.e., 2 days after giving notice of sexual harassment). Complainant reported that HRS directed S1 to go into Complainant's medical records to substantiate Complainant's claim that she saw GYN on the day in question. Complainant also told the EEO counselor that after she reported her claim of sexual harassment, "[she] has been made the subject of many rumors around the office about her sexual activity, mental illness and her reasons for filing a claim."

The record further supports Complainant's allegation that false rumors were circulating among the staff within days of notifying S1 of the sexual harassment. Specifically, on April 17, 2015, LVN was interviewed by a police investigator and stated that Complainant was "flirty and cutesy with GYN." LVN also told the police investigator that Complainant went to GYN's office the previous summer to tell him that "she had something to show him and pulled her pants down." LVN accused Complainant of "setting up" GYN because she was "lazy, did not want to work, and was looking for a way out." In addition, LVN informed the police investigator that Complainant's ex-husband is African-American and her son is half African-American. LVN also told the police investigator that she believed Complainant might have been attracted to GYN because he was young and successful.

LVN's affidavit for the EEO investigative report is not consistent with her statements to the VA Police. In her affidavit, LVN denies making the statement to the VA Police that Complainant was attracted to GYN because he was young and successful. She also denies stating that Complainant was setting up GYN or that she was looking for a way out. However, in her affidavit, LVN admits she told the VA Police investigators to look at Complainant's attendance record, but does not explain why that would be relevant. LVN also admits in her affidavit that she told the VA Police that she overheard Complainant telling GYN that her husband was African-American and that Complainant had shown GYN and LVN pictures of her new African-American boyfriend on her cell phone.

We find that LVN made false statements about Complainant to the police investigator that were designed to attack her credibility and damage her sexual harassment claim. The record corroborates Complainant's account that she was friendly yet professional and not flirtatious with GYN. A coworker (CW-1) provided a statement in support of Complainant's character and work ethic. Specifically, CW-1 stated:

> "[Complainant] is dedicated, efficient and fully capable of performing her responsibilities here in the Chico Specialty Clinic.

> On a daily basis she strives to get all of her responsibilities completed in a timely and efficient manner. She is knowledgeable and always helpful to her coworkers and veterans alike. When [Complainant] assumes a task, she "gets it done" without complaint, and in the most efficient manner. She always strives to learn and adapts to all the new changes the VA is experiencing and learns quickly. I have absolutely-no concerns about [Complainant's] professionalism and abilities within our work environment and am always confident she will get the job done."

In addition to CW-1's statement, both Employee E and S1 testified that Complainant was professional. The testimonial and documentary evidence in the record also shows that Complainant did not have an attendance problem.

On April 17, 2015, a police investigator interviewed the Director who told the officer that Complainant was an "unstable person" who may have been making the sexual harassment claim to get some time off. We find that the Director also made false statements about Complainant to the police investigator that were designed to attack her credibility and damage her reputation. The Director's EEO investigative affidavit is not consistent with his statements to the VA Police. The Director also denies telling the police investigator that Complainant was unstable or that she was making her sexual harassment claim to get some time off.

We do not find the Director to be credible. The record shows that he has knowledge of Complainant's Bi-polar Disorder due to his former patient/doctor relationship with her and attempted to use that knowledge to discredit her and her sexual harassment complaint. The record, however, does not support the conclusion that Complainant was unstable or looking for a way to get some time off. According to her supervisory chain of command and other co-workers who regularly worked with and around Complainant, she was a reliable, hard-working and successful employee who did not have an attendance problem.

On April 22, 2015, SW informed Complainant directly that PA had told him that she heard a rumor that SW and Complainant were having sex. Complainant believed that this rumor was PA's attempt to discredit her sexual harassment complaint by attempting to ruin her personal and professional reputation. PA testified that "[t]here were comments made by [Complainant] to other employees that she was having a relationship with [SW]." PA testified that she told SW that she heard the rumors from co-workers and overheard Complainant discussing it in the break room. SW testified that PA "commented to [him] in passing that she heard a rumor [he] was intimate with [Complainant]."
SW also testified that he stated to PA: "[Y]ou know that's not true, where did that come from?" According to SW, PA responded "you know how rumors fly through the clinic, *who knows*. [emphasis added]." SW's testimony contradicts PA's claim that she told SW that she heard Complainant spreading the rumors to coworkers. SW further testified that Complainant was "piss[ed] off" when she learned about the rumors.

Here again, a discredited co-worker makes derogatory false statements about Complainant. It is clear that numerous false stories about Complainant's character designed to discredit her sexual harassment claim continued to circulate in the workplace shortly after she reported her complaint to management officials.

In addition to the false rumors circulating among the staff, on May 18, 2015, NM threatened Complainant with progressive discipline for discussing the sexual harassment complaint with coworkers. NM asserts that she instructed Complainant not to speak with anyone about the sexual harassment allegations because it was a confidential police investigation. The record shows that the investigation was initially "closed" on April 21, 2015, and again on May 6, 2015. NM's written warning was sent on May 18, 2015 via email.

Complainant explains that she had gone to the Chief Employee/Labor Relations Specialist (SHRS) who was HRS's direct supervisor regarding the false rumors that her co-workers were spreading and he advised her to get character reference letters from other staff that she worked with to rebut the statements made to police investigators. Complainant states that she approached a few coworkers for character references after the conclusion of the police investigation. Complainant states that she was in the process of getting character references when she got the threatening email from NM. According to Complainant's undisputed testimony, she had asked one of the LPNs (LPN1) who worked under NM to write her a letter of reference, because even though Complainant had not worked with LPN1 for a couple of years, LPN1 still called on Complainant to assist her. Complainant states that LPN1 had asked NM how to write a letter of reference. NM's threatening letter was sent only after she learned that LPN1 was writing the letter of reference for Complainant.

We find that the numerous false and denigrating rumors circulating in the workplace and NM's efforts to threaten Complainant with discipline were designed to damage Complainant's reputation and discredit her sexual harassment allegations. Given the purpose behind the rumors and threats, in addition to the fact that these events occurred within days after Complainant reported the sexual harassment to S1, HR and the VA Police, we find that Complainant has sufficiently established that the harassing conduct was motivated by Complainant's protected EEO activity.

Element 1 -Conduct Sufficiently Severe to Dissuade a Reasonable Worker from Participating in Protected EEO Activity

It is clear from the record, that many of Complainant's co-workers were spreading false and denigrating rumors about Complainant to discredit her claims of sexual harassment. Complainant mostly learned about the rumors and gossip second-hand. However, that did not shield her from harm.

Testimonial evidence supports the finding that she was well-aware of the false rumors constantly circulating among staff. The record also shows that she was severely stressed over the damage to her reputation and felt that her character was dragged through the mud to get her to back down from her complaint and/or damage her credibility, thereby weakening her case against GYN. Accordingly, we find the retaliatory harassment sufficiently severe to dissuade a reasonable person from making or supporting a sexual harassment complaint.

Element 2 - Complainant Notified Management Officials of the Retaliatory Harassment

The record also supports the conclusion that management officials were notified and aware of the retaliatory harassment toward Complainant.

The testimonial and documentary evidence shows that Complainant notified several management officials about the concerted effort to damage her reputation and discredit her sexual harassment claim. The record shows that Complainant reported retaliatory harassment to different management officials, including S1, SHRS, other HR representatives, the Director, and the Director's staff. Complainant was repeatedly told it would be taken care of. The record shows that in April 2015, Complainant notified S1 about the harassment. S1 testified that Complainant came to her office to tell her that her coworkers were spreading false rumors about her and talking negatively about her, yet S1 admitted that she did not tell anyone about Complainant's complaints because she treated them as confidential. The record contains emails from SHRS in May 2015 and October 2015 acknowledging Complainant's repeated attempts to get assistance regarding the retaliatory harassment by NM. Complainant also sought assistance from the Director in mid-July 2015.

Element 3 - Management Official Tolerated or Responded Inadequately Manifesting Indifference or Unreasonableness Under the Circumstances

The undisputed record shows that management officials did not address Complainant's repeated complaints about retaliatory harassment. Not one management official investigated or otherwise addressed Complainant's complaints about the false and derogatory rumors being spread by her coworkers. With respect to NM's threats of discipline to Complainant for speaking to co-workers about her sexual harassment complaint, the record shows that both S1 and SHRS attempted to relieve Complainant's anxiety by assuring her that NM was not able to issue any discipline. Yet, at the same time, S1 sent NM an email giving the impression that she would assist NM by speaking to Complainant about it. The documentary evidence in the record shows that NM continued to alert S1 and SHRS about what she felt were Complainant's breaches of confidentiality in August 2015 and in October 2015 (i.e., well beyond the VA Police investigation and GYN's departure from the Agency). SHRS continued to assure Complainant that NM could not issue her discipline. Clearly, nothing was ever done to protect Complainant from the continuing harassment by her coworkers. Accordingly, for the reasons set forth above, we find sufficient evidence in the record to conclude that the Agency engaged in unlawful retaliatory harassment.

Disclosing Medical Records – Claim 2

The Rehabilitation Act prohibits the disclosure of an employee's medical information except in certain limited situations to the following personnel: supervisors and managers regarding reasonable accommodations; first aid and safety personnel; government officials investigating statutory and regulatory compliance; workers' compensation offices or insurance carriers; and officials responsible for maintaining records and reporting on the processing of reasonable accommodation requests. Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, Question 20 (Oct. 20, 2000). Disclosure of confidential medical information in a manner that does not conform to one of these five exceptions constitutes a per se violation of the Rehabilitation Act. Scott v. U.S. Postal Serv., EEOC Appeal No. 0120103590 (Sept. 19, 2012), req. for recon. Denied, EEOC Request No. 052013008 (April 16, 2013); Celinda L. v. Dep't of Defense, EEOC No. 0120143166 (Sept. 8, 2016).

The Rehabilitation Act does not limit the prohibitions against improper disclosure of confidential medical information solely to individuals with disabilities. Rather, information regarding the medical condition or history of *any* employee is to be treated as a confidential medical record. 29 C.F.R. § 1630.14(c).

S1 testified that HRS instructed her to provide information from Complainant's medical records. S1 further testified that she "looked [at Complainant's medical records] and told [HRS] that, yes, an order was placed by [GYN] on that date which [Complainant] said it was, and that is the extent of what was discussed." HRS corroborates S1's testimony and explains that she needed to determine whether Complainant should be considered a patient or a co-worker of GYN for purposes of HR's investigation. The undisputed record shows that neither S1 nor HRS followed established policy of obtaining a release from Complainant prior to S1 accessing Complainant's medical records and notifying HRS that Complainant had a procedure that day.

Complainant asserts that S1's disclosure to HRS revealed confidential medical information in violation of the Rehabilitation Act. In Complainant's appeal brief she argues that confidential medical information is not limited to a diagnosis and may include information about medical tests that does not include a specific diagnosis, or information about a reasonable accommodation provided to an employee. Citing Letter from EEOC Office of Legal Counsel, ADA/Rehabilitation Act: Confidentiality/EEO Process (Sept. 27, 2006), available at https://www.eeoc.gov/eeoc/foia/letters/2006/ada-rehabact-confidentialityeeoprocess.html.

The Agency asserts that the disclosure that Complainant had a procedure on a given day did not amount to the disclosure of confidential information as proscribed by the Rehabilitation Act. See Hampton v. U.S. Postal Serv., EEOC Appeal No. 01A00132 (April 13, 2000); Dozbush v. Dep't of Transportation, EEOC No. 01983929 (Feb. 1, 2002) (a notation that an individual has taken sick leave or had a doctor's appointment is not confidential medical information).

We agree with the Agency that disclosure of an unspecified "medical procedure" would not amount to confidential medical information under the Rehabilitation Act. However, the undisputed record shows that S1 retrieved and viewed Complainant's confidential medical records, which included the specifics about the procedure (i.e., a pregnancy test and the results of the pregnancy test), in addition to every other aspect of Complainant's medical history. Accessing Complainant's medical files without Complainant's prior knowledge or authorization is a violation of the Rehabilitation Act. See Philbert v. Dept. of Veterans Affairs, 0720090041 (May 5, 2010) (supervisor twice accessed complainant's medical records without complainant's knowledge or authorization); Velva B., v. U.S. Postal Serv., EEOC DOC 0720160006 (Sept. 25, 2017). Accordingly, we find the Agency violated the Rehabilitation Act.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final decision and REMAND the matter for further processing in accordance with the ORDER below.

ORDER

The Agency is ordered to take the following remedial action:

1. Within ninety (90) days of the date this decision is issued, the Agency shall restore to Complainant any and all sick leave, annual leave, and leave without pay, taken as a result of the Agency's discriminatory or retaliatory actions set forth above.

2. Within ninety (90) days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC No. 01922369 (Jan. 5, 1993). Complainant shall cooperate with the Agency in this regard. The Agency shall issue a final decision with appeal rights addressing the issues of compensatory damages no later than thirty (30) days after the completion of the investigation.

3. Complainant, through counsel, shall also submit a request for attorney's fees and costs in accordance with the Attorney's Fees paragraph set forth below. No later than thirty (30) days after the Agency's receipt of the attorney's fees statement and supporting affidavit, the Agency shall issue a final agency decision with appeal rights addressing the issues of attorney's fees and costs. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth below.

4. Within thirty (30) days of the date this decision is issued, the Agency shall send a copy of this decision to the Department of the Army at Fort Sam Houston, in San Antonio, Texas for placement in GYN's Official Personnel Folder.

5. Within ninety (90) days of the date this decision is issued, the Agency shall provide at least sixteen (16) hours of in-person or interactive EEO training to the following individuals: (a) S1; (b) the entire Human Resources Department at the Chico VA and any other Human Resource Department that was involved with Complainant's complaints of sexual harassment and retaliatory harassment; (c) the Director; (d) NM; (e) S2; (f) LVN; and (g) PA to ensure that they become aware, and continue to be aware of, their obligations, responsibilities, and rights under EEO laws and regulations, including sexual harassment, retaliatory harassment by supervisors and coworkers, and the protection and handling of confidential medical information.

6. Within sixty (60) days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against S1, S2, the Director, NM, HRS, SHRS, PA, and LVN. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials or employees have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).

7. The Agency shall immediately post a notice in accordance with the paragraph below.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at Department of Veteran Affairs (VA) Northern California Health Care System at the Chico Outpatient Clinic in Chico, California facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency.

The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of the date this decision was issued. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated**. See 29 C.F.R. § 1614.409.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or

2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision.

A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405;

Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.**

The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

Carlton M. Hadden, Director
Office of Federal Operations

September 14, 2018
Date