



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

[REDACTED]

Lynne E.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 0120170202

Agency No. 200P-0154A-2015103527

DECISION

Complainant timely 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 September 7, 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. For the following reasons, the Commission REVERSES the Agency's final decision.

ISSUE PRESENTED

The issue presented is whether the preponderance of the evidence establishes that Complainant was subjected to a hostile work environment based on sexual orientation.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Readjustment Counselor, GS-0101-11, at the Agency's VA Readjustment Counseling Service facility in Wasilla, Alaska. Complainant is a lesbian. Complainant's first-line supervisor was a Team Leader (S1, heterosexual), and her second-line supervisor was the Deputy Regional Manager for Region 4A (S2, heterosexual).

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.

S1 hired Complainant in October 2014. Complainant did not live in Alaska when she was hired. A Clinical Psychologist (C1, heterosexual) stated that she reached out to Complainant after she was hired and helped her find a place to live before moving to Alaska. Complainant subsequently moved to Alaska, and she began working at the Wasilla facility on January 25, 2015.

According to Complainant, she was assigned to participate in outreach activities in Sitka, Alaska, in late February 2015, with C1 and the Outreach Coordinator (C2, heterosexual). Complainant alleged that, after returning from the trip to Sitka, S1 told her that C1 and C2 were supposed to allow her to shadow them in Sitka but that he heard that they had “ditched” her at the Sitka Job Center while they did outreach. The Office Manager (C3, heterosexual) averred that, when C1 heard that Complainant was going to Sitka, she said she would need a larger rental car because she did not want to sit next to Complainant. Complainant averred that at a March 16, 2015, staff meeting she asked C1 why she had been ditched at the Sitka Job Center and that C1 and C2 responded that they had not realized that Complainant was supposed to shadow them. C1 stated that S1 asked her to include Complainant on the trip to Sitka but that he told her to stay at the Sitka Job Center. According to C1, at the meeting Complainant accused her and C2 of sightseeing while Complainant was at the Job Center, which would constitute fraud against the federal government. Complainant stated that on March 17 or 18, 2015, S1 told Complainant that C1 stated that she had hired a lawyer and was investigating suing Complainant for slander for insinuating that C1 was not truthful. C1 denied telling S1 that she hired a lawyer. S1 stated that C1 told him that she had checked with her lawyer and that Complainant’s comments were slanderous. C2 averred that he heard C1 say that Complainant’s comments were slanderous but that he did not remember C1 saying that she was going to sue Complainant.

Complainant averred that on April 8, 2015, S1 told her during a meeting that he already knew that she was a lesbian. S1 stated that Complainant said that she had something to tell him and that he responded that he already knew what she was going to say, that she was a lesbian. According to Complainant, S1 said that, after Complainant had been hired, C1 had “Googled” Complainant and found a September 22, 2002, letter to the editor of a local newspaper in which Complainant identified herself as a member of the LGBT community. Complainant alleged that S1 informed her that, in the fall of 2014, C1 showed him the letter to the editor and said that “he didn’t know what he was doing by hiring [Complainant]” because “Wasilla is not ready for this.” Complainant also alleged that C1 told S1 that Complainant “would be better off working at the Fairbanks Vet Center, where there are more gays and lesbians.”

C1 stated that, in November 2014, S1 had asked her to investigate Complainant’s background and that she found the letter to the editor, which she showed to S1. According to C1, after looking at the letter to the editor, S1 said, “Oh my gosh, I’ve hired a gay employee.” C1 denied showing the letter to anyone other than S1 and denied stating that “Wasilla is not ready for this.” C1 also denied telling S1 that he should not have hired Complainant and denied suggesting that Complainant would be better off working in Fairbanks. S1 denied asking C1 to investigate Complainant and stated that C1 showed the letter to the editor to him, C2, and C3. S1 averred that C1 told him that it was a mistake to hire Complainant and that she should work in Fairbanks because there were more gay people there.

S1 stated that he did not remember C1 saying that “Wasilla is not ready for this.” C3 stated that when C1 showed her, S1, and C2 the letter to the editor she told S1, “Look what you did,” and said, “The Valley is not ready for this.” C2 stated that C1 came to his office to show him Complainant’s letter to the editor.

Complainant stated that, on April 13, 2015, she asked S1 if they could meet with C1 to discuss their conflict but that S1 stated that it would only “make things worse” and that he had not done anything about C1’s comments because he did not want to lose his job. S1 denied saying that he was afraid of losing his job, but he stated that he was not willing to confront C1 because he feared that she would retaliate against him. Complainant averred that S1 subsequently told her that, on April 13, 2015, C1 told S1 that Complainant “had a sense of entitlement” and was going to “play the gay card.” C1 denied making these statements. S1 stated that C1 said, “These people have a sense of entitlement.”

According to Complainant, on April 16, 2015, she reported C1’s comments to the Regional Manager (S3, sexual orientation unknown), and, on April 29, 2015, she reported C1’s comments to S2. An Anchorage Veterans Center Team Leader (S4, declined to provide his sexual orientation) averred that, in April 2015, S3 asked him to conduct a fact-finding mission in Wasilla “to determine why things had become dysfunctional.” S4 averred that, although the focus of the fact-finding was not C1’s comments, Complainant and S1 both reported during the fact-finding that C1 had researched Complainant and made comments about her sexual orientation. According to S4, after the fact-finding, he told S1 to “focus back on the mission” and the productivity of the team.

Complainant stated that in May 2015 the Associate Regional Manager (S5, heterosexual) came to Wasilla and that she reported C1’s harassment to him during that visit. According to S5, he was in Wasilla on June 18 and 19, 2015, for a regularly scheduled site visit, and that Complainant told him during the site visit that she was being harassed by C1 because of her sexual orientation. S5 stated that he reported Complainant’s concerns to S2. Complainant averred that she discussed the possibility of a transfer with S2 to get out of the hostile work environment and that she was subsequently transferred to the Kenai, Alaska Veterans Center on July 29, 2015. S2 stated that when Complainant filed an EEO complaint, he stopped investigating the alleged harassment because the matter would be investigated by an EEO Investigator and he decided to delay disciplining C1 until a determination was made on the merits of Complainant’s EEO complaint.

Procedural History

On May 21, 2015, Complainant initiated contact with an EEO Counselor. On June 15, 2015, the EEO Counselor sent Complainant a letter closing the informal EEO counseling process and a copy of Notice of the Right to File a Discrimination Complaint. The EEO Counselor described Complainant’s complaint as a harassment/hostile work environment claim based on sexual orientation and listed the dates of occurrence as January 2015, February 2015, and April 8, 2015. Report of Investigation (ROI) at 43.

On June 23, 2015, Complainant filed an EEO complaint alleging that the Agency subjected her to a hostile work environment based on sex (sexual orientation). The Agency accepted Complainant's claim that she was subjected to harassment on the basis of sexual orientation, including when:

1. On March 17, 2015, C1 threatened to sue Complainant for slander when Complainant asked why C1 had not included her in outreach activities in Sitka;
2. On April 8, 2015, S1 told Complainant that he already knew that she was lesbian because C1 had looked up Complainant online when she was hired in October 2014, and showed S1 and other coworkers the letter to the editor in which Complainant identified herself as a member of the LGBTQ community;
3. On April 8, 2015, Complainant learned that C1 said that Complainant should work in Fairbanks because there were more gay people there;
4. On April 13, 2015, S1 told Complainant that he did not do anything about C1's "Fairbanks comments" because he was afraid to lose his job;
5. On April 13, 2015, Complainant learned that C1 said that she had a "sense of entitlement" and could not "play the gay card"; and
6. On May 19, 2015, C3 told Complainant that she had heard C1 say that "Wasilla [was] not ready for this," referring to Complainant's sexual orientation, and state that S1 "should not have hired [Complainant]."

At the conclusion of 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). Therein, the Agency concluded that Complainant failed to prove that it had subjected her to discrimination as alleged.

In the final decision, the Agency found that the preponderance of the evidence in the record established that C1 did perform a background check on Complainant and made negative comments about her sexual orientation, which Complainant learned about in April and May 2015. Specifically, the Agency determined that, upon finding the letter to the editor in which Complainant identified her sexual orientation, C1 shared the letter with S1 and her coworkers and told S1 that he made a mistake in hiring Complainant and that either Wasilla or "the Valley" was not ready for Complainant because she was a lesbian. The Agency also found that the preponderance of the evidence established that, during the outreach trip to Sitka, C1 inexplicably refused to include Complainant in the outreach activities and that, when Complainant complained about being left behind in Sitka, C1 accused Complainant of slander. The Agency did not find that preponderant evidence established that C1 threatened to sue Complainant or that C1 said that Complainant should work in Fairbanks because there were more gay people there, that gay people have a sense of entitlement, or that Complainant was playing the gay card.

In determining whether Complainant was subjected to a hostile work environment, the Agency noted that, although C1's comments clearly related to Complainant's sexual orientation, they were not made in front of Complainant and only occurred on a few occasions.

The Agency stated that hostile work environments based on sexual orientation tend to include vulgar, sex-based epithets and threatening or demeaning conduct to be considered severe or pervasive. The Agency therefore found that the alleged harassment was insufficiently severe or pervasive to constitute a hostile work environment.

The Agency continued its final decision by assuming *arguendo* that Complainant established a hostile work environment and considering whether the Agency took prompt, appropriate, and effective remedial action as soon as it became aware of the alleged harassment. The Agency stated that S1 learned about the harassment on April 8, 2015, and that S2 learned about the harassment in April or May of 2015. The Agency found that several officials visiting Wasilla conducted some sort of investigation, although S2 discontinued these investigations when Complainant filed an EEO complaint. In a footnote, the Agency cited Lulverne v. Dep't of Health and Human Serv., EEOC Appeal No. 01966875 (Oct. 1, 1998) for the proposition that an agency's obligation to take prompt, appropriate action in response to allegations of harassment is independent of the EEO process. Nonetheless, the Agency concluded that it took immediate, appropriate, and effective action by investigating Complainant's allegations and by transferring her to Kenai at her request.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the Agency improperly disregarded her allegations of harassment beginning in January 2015 and requests that these incidents be considered as part of her hostile work environment claim. Complainant argues that, even excluding the instances of harassment that occurred before March 17, 2015, the harassment based on her sexual orientation was severe and pervasive. According to Complainant, although she did not hear C1 make the offensive comments about her sexual orientation directly, her first-line supervisor, S1, directly relayed C1's homophobic comments to her and also told her that he would not take any corrective action. Complainant also contends that management failed to investigate her allegations that she was being harassed or otherwise remedy the harassment. According to Complainant, because the Agency failed to address her harassment allegations at all for months, she had no choice but to request a transfer to Kenai because of the ongoing harassment in Wasilla. Complainant requests that the Commission reverse the Agency's final decision and award her \$100,000 in compensatory damages, as well as reasonable attorney's fees and costs.

In response to Complainant's appeal, the Agency contends that Complainant failed to allege harassment from January or February 2015 in her formal complaint and notes that she failed to raise this issue prior to or during the investigation of her complaint. According to the Agency, when considering the totality of the circumstances, Complainant was not subjected to harassment that was sufficiently severe or pervasive to constitute a hostile work environment. According to the Agency, it properly and promptly investigated Complainant's allegations, and she asked to transfer before the Agency had a chance to rectify the situation. The Agency requests that its final decision be affirmed.

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").

To establish a claim of harassment based on sexual orientation² a complainant must show that: (1) she belongs to a statutorily protected class; (2) she was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on her statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been "sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993). The harasser's conduct should be evaluated from the objective viewpoint of a reasonable person in the victim's circumstances. Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 at 6 (Mar. 8, 1994).

With respect to element (5), an employer is subject to vicarious liability for harassment when it is created by a supervisor with immediate (or successively higher) authority over the employee. See Burlington Industries, Inc., v. Ellerth, 524 U.S. 742, 118 S. Ct. 2257, 2270 (1998); Faragher v. City of Boca Raton, 524 U.S. 775, 118 S. Ct. 2275, 2292-93 (1998). However, where the harassment does not result in a tangible employment action the agency can raise an affirmative defense, which is subject to proof by a preponderance of the evidence, by demonstrating: (1) that it exercised reasonable care to prevent and correct promptly any harassing behavior; and (2) that complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided by the agency or to avoid harm otherwise. See Burlington Industries, supra; Faragher, supra; Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999).

² In Bostock v. Clayton County, the Supreme Court held that discrimination based on sexual orientation or transgender status is prohibited under Title VII. 590 U.S. ___, 140 S. Ct. 1731 (2020); see also Baldwin v. Dep't of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015) (an allegation of discrimination based on sexual orientation states a claim of sex discrimination under Title VII because sexual orientation is inherently a sex-based consideration).

This defense is not available when the harassment results in a tangible employment action (e.g., a discharge, demotion, or undesirable reassignment) being taken against the employee. 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 show that it took immediate and appropriate corrective action. Id.

In the instant case, the Agency's acknowledged in its final decision that the preponderance of the evidence in the record established that Complainant was subjected to harassment based on her sexual orientation, but that the harassment was not sufficiently severe or pervasive to be actionable. Specifically, the Agency found that C1 performed a background check on Complainant, made negative comments about Complainant's sexual orientation, inexplicably left Complainant behind while performing outreach in Sitka, and accused Complainant of slander when Complainant complained about being left behind in Sitka. Accordingly, we consider whether the harassment was sufficiently severe or pervasive to constitute a hostile work environment.

Hostile Work Environment

In Harris, 510 U.S. at 21, the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57, 61 (1986), that harassment is actionable if it is sufficiently severe or pervasive to alter the conditions of the complainant's employment. Where a complaint does not challenge an agency action or inaction regarding a specific term, condition, or privilege of employment, a claim of harassment is actionable only if, allegedly, the harassment to which the complainant has been subjected was sufficiently severe or pervasive to alter the conditions of the complainant's employment. An abusive or hostile work environment exists "when the workplace is permeated with discriminatory intimidation, ridicule and insult that is sufficiently severe or pervasive to alter the condition of the victim's employment." Meritor, 477 U.S. at 65.

Here, before Complainant even began working in Wasilla, the small VA Readjustment Counseling Service facility was already abuzz with negative gossip about Complainant's sexual orientation, as early as November 2014. According to the record, C1 told S1, C2, and C3 that Complainant was a lesbian, that it therefore was a mistake to have hired her, that Wasilla was "not ready" for Complainant because of her sexual orientation, and that Complainant should work in a community with more gays and lesbians. Although Complainant did not learn about C1's comments until April 2015, we find that the sexual orientation-based comments were sufficiently pervasive to alter the terms of Complainant's employment, poisoning the environment before Complainant had even started work. On April 8, 2015, Complainant not only learned that her supervisor and all of her coworkers had been aware of her sexual orientation for approximately six months, but she also learned that one of her coworkers, C1, did not want to work with her because of her sexual orientation and had made comments to that effect to the whole office. Complainant had previously learned that C1 did not include her in outreach activities in Sitka as directed by S1, and the record also reflects that, when C1 heard that Complainant would be going to Sitka, C1 said she would need a larger rental car because she did not want to sit next to Complainant.

Complainant repeatedly asked various management officials for help with the situation, but her only recourse was to request a transfer to a different location when various investigations did not alter the hostile work environment. From the viewpoint of a reasonable person, these circumstances reflect harassment that is sufficiently severe or pervasive to constitute an actionable claim, i.e., a hostile work environment. We will next consider whether the Agency is liable for this hostile work environment.

Agency's Liability for the Hostile Work Environment

From the record, it is undisputed that management was aware of C1's sexual orientation-based harassment of Complainant. Taylor v. Dep't of the Air Force, EEOC Request No. 05920194 (July 9, 1992) (employers will generally be deemed to have constructive knowledge of harassment that is openly practiced in the workplace or is well-known among employees). In fact, S1 was aware that C1 had been spreading rumors and making negative comments about Complainant's sexual orientation months before Complainant even began working in Wasilla, and he was the one who first relayed C1's smear campaign against Complainant to her in April 2015. S1 conceded that he told Complainant that he was reluctant to confront C1 about her behavior because he was worried that she would retaliate against him. Moreover, the inadequate response from management may even have emboldened C1 to continue harassing Complainant. Debbra R. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120161305 (July 26, 2016) (finding that when harassment is repeated, a supervisor's failure to respond to instances of alleged harassment heightens the severity of the alleged act).

Various other management officials subsequently came to Wasilla and learned about C1's conduct while in Wasilla for other reasons, but the record does not reflect that anyone thoroughly investigated Complainant's allegations. According to the record, S4 visited Wasilla in April 2015 to investigate a generally dysfunctional work environment, and S5 came to Wasilla in May or June 2015 for a regularly scheduled site visit. S2 stated that the Agency stopped investigating Complainant's harassment allegations when she filed an EEO complaint and deferred consideration of further measures, such as disciplinary action against C1, pending the outcome of the EEO investigation. Other than allowing Complainant to transfer to Kenai in late July 2015, months after Complainant reported the harassment, no corrective actions were taken. As the footnote in the Agency's final decision reflected, the filing of an EEO complaint does not relieve the Agency of its obligation to take corrective action in response to allegations of harassment. We therefore find that the Agency is liable for the hostile work environment because it failed to take immediate and appropriate corrective action.

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 finding no discrimination and REMAND the matter for further processing in accordance with this decision and the ORDER below.

ORDER

The Agency shall take the following remedial actions:

1. Within ninety (90) calendar days of the date this decision is issued, the Agency shall conduct a supplemental investigation concerning Complainant's entitlement to compensatory damages and issue a final decision with appeal rights to Commission that determines the amount of compensatory damages due Complainant. Within thirty (30) calendar days of determining the amount of compensatory damages due Complainant, the Agency shall pay her that amount.
2. Within ninety (90) calendar days of the date this decision is issued, the Agency shall restore to Complainant any paid leave or compensate her for any unpaid leave taken as a result of the discriminatory harassment or to facilitate her transfer from Wasilla to Kenai.
3. Within ninety (90) calendar days of the date this decision is issued, the Agency shall provide a minimum of eight hours of in-person or interactive EEO training, with a special emphasis on harassment, to all employees at the Wasilla VA Readjustment Counseling Service, as well as C1, S1, S2, S3, S4, and S5.
4. Within sixty (60) calendar days of the date this decision is issued, the Agency shall consider disciplinary action against C1, S1, S2, S3, S4, and S5. The Commission does not consider training to constitute discipline. The Agency shall report its decision to the Compliance Officer. If the Agency decides not to discipline these individuals, it shall specify the reason(s). If any of these individuals have left the Agency, it shall furnish evidence of their departure dates.
5. Within thirty (30) calendar days of the date this decision is issued, the Agency shall post a notice in accordance with the statement entitled "Posting Order."

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 its Wasilla, Alaska VA Readjustment Counseling Service 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 (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/he 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 receipt of this decision. 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 (K0719)

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.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 CFR § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0620)

The Commission may, in its discretion, reconsider this appellate decision if the complainant or the agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the [EEOC Public Portal, which can be found at https://publicportal.eeoc.gov/Portal/Login.aspx](https://publicportal.eeoc.gov/Portal/Login.aspx).

Alternatively, complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted together with the 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

June 17, 2021

Date