



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

[REDACTED]  
Judie D.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2020002526

Agency No. 2003-0520-2018102292

**DECISION**

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's January 10, 2020 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 Complainant has established that the Agency subjected her to a hostile work environment and discrimination based on her EEO activity.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Program Support Assistant at the Agency's Gulf Coast Veterans Healthcare System in Biloxi, Mississippi.

On February 3, 2018, Complainant initiated EEO Counselor contact. Informal efforts to resolve her concerns were unsuccessful. On March 12, 2018,<sup>2</sup> Complainant filed a formal complaint

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<sup>1</sup> 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.

<sup>2</sup> On October 17, 2018, Complainant amended her complaint to add five new claims. The additional claims were accepted by the Agency.

alleging that the Agency subjected her to a hostile work environment and discriminated against her based in reprisal for her protected EEO activity (opposition activity: past Report of Contact submissions where Complainant listed sex-based harassment and instant complaint)<sup>3</sup> when:

1. on February 1, 2016, the Assistant Chief of Environmental Management Service (RMO1,<sup>4</sup> prior EEO activity), threatened Complainant when he accused her of leaving her work area without notification and began shouting in the hallway, “that you are not to leave the office without me specifically...did you hear what I said...you will hear when I put it in black and white;”
2. on June 19, 2017, RMO1 asked Complainant if she had on leather pants and accused her of failing to update the cascade callback roster;
3. on January 23, 2018, RMO1 intimidated and threatened Complainant when he ordered her to input another employee’s request for leave into the time log;
4. on January 23, 2018, RMO1 intimidated and threatened Complainant when he waved his hand in her face and yelled in an aggressive tone of voice, “You just do like I told you...I am not asking you...I need this done now...If you don’t put this request in you will be written up;”<sup>5</sup>
5. on April 2, 2018, Complainant became fearful when RMO1 entered her work area twice inquiring and asking employees, “Has [Complainant] been over here all day?”;
6. on May 17, 2018 to the present, Complainant has felt threatened when RMO1 continually violated the stay-away notice by entering her work area and staring at her through the door window;
7. on July 20, 2018, RMO1 charged Complainant 15 minutes of Annual Leave for being tardy, but did not charge another program support employee for being late one hour;

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<sup>3</sup> Complainant’s prior EEO activity (opposition activity) was a Report of Contact (ROC) she submitted on February 1, 2016. Complainant filed the ROC following the incident in claim 1, where she alleged a hostile work environment based on her sex. In the ROC, Complainant asserted that the Responsible Management Official (RMO1) “expresses deep rooted resentment towards women in the workplace.” The record indicated that Complainant filed several other ROCs in conjunction with the events listed in support of her claim of harassment.

<sup>4</sup> Responsible Management Official (RMO).

<sup>5</sup> In January 2018, RMO1 submitted a ROC against Complainant for failing to follow instructions. Complainant also filed a ROC against RMO1 for the same incident.

8. on August 15, 2018, RMO1 threatened Complainant with disciplinary action and falsely accused her, in an EMS staff meeting, of being responsible for EMS having too many “delinquents” in credit card funds and causing him to be late on approvals; and,
9. on August 28, 2018, RMO1 refused to sign Complainant’s request for overtime and yelled at her during his phone call, “I tell you what, come get them,” and slammed the phone down.

On September 4, 2018, the EEO Investigator concluded his investigation and submitted the Report of Investigation (ROI-1) to the Regional EEO Office. The ROI-1 covered claims 1 through 4. The ROI-1 contained attachments and affidavits from RMO1, Complainant and relevant witnesses. Additionally, on December 13, 2018, after Complainant’s complaint was amended to add claims 5 through 9, Complainant’s first-line supervisor (S1) provided an affidavit regarding those claims.

On May 31, 2019, the Agency assigned a second EEO Investigator to conduct a supplemental investigation on claims 5 to 9. On June 17, 2019, the second EEO Investigator concluded her investigation and submitted the Report of Investigation (ROI-2). The supplemental ROI-2’s investigative summary contained a statement from Complainant but did not have any statements from relevant witnesses or RMO1. There is no indication that the relevant witnesses or RMO1 were unavailable for the supplemental investigation.

At the conclusion of the investigations, the Agency provided Complainant with copies of the reports of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant initially requested a hearing and then withdrew her request. In accordance with Complainant’s request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b).

On January 10, 2020, the Agency issues its final decision. The Agency noted that claims 7 and 9 were discrete claims of retaliation as well as evidence in support of Complainant’s hostile work environment claim. In its final decision, the Agency relied on the supplemental investigation and attachments that Complainant had provided during the supplemental investigation to discuss claims 7 and 9. When reviewing Complainant’s hostile work environment claim, the Agency determined that the remaining claims were Complainant’s focus on RMO1’s management style. The Agency did not go into specificity in any of the remaining claims. The Agency only broadly determined that RMO1 had an unpleasant and even “hostile” management style. Without more, the Agency concluded that Complainant failed to prove that the Agency subjected her to a hostile work environment or retaliation as alleged.

### CONTENTIONS ON APPEAL

On appeal, Complainant asserts that she has been subjected to a constant barrage of harassment by RMO1. Complainant asserts that the retaliatory behavior significantly increased after she complained of the behavior and filed the first February 2016 ROC against RMO1. Complainant asserts that following each ROC, RMO1's hostile behavior would significantly increase. For example, Complainant notes that after RMO1 was issued a "stay away" order following her second ROC, she found him lurking outside of her office. Complainant also notes that S1's testimony fully supports her allegations that RMO1 was harassing and retaliating against her.

Complainant also disputes the Agency's arguments that RMO1 was simply a difficult manager, but one that was an "equal opportunity harasser". Complainant argues that even if RMO1 treated subordinates poorly, there was a distinctly hostile and retaliatory behavior based on her sex and protected activity. Complainant acknowledges that RMO1 had a harsh management style to begin with, one that was already quite offensive. However, after the submission of the first ROC, his harassing behavior significantly escalated. Complainant notes that following such continued hostilities she sought treatment for her mental health.

In response, the Agency asserts that its FAD appropriately determined that management officials had provided legitimate nondiscriminatory reasons for its actions and that Complainant failed to demonstrate was pretext for the allegedly retaliatory actions. The Agency essentially reiterates its FAD on appeal. The Agency requests that the Commission uphold the FAD.

### STANDARD OF REVIEW

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").

### ANALYSIS AND FINDINGS

#### *New Basis Raised for the First Time on Appeal*

Additionally, we note that for the first time on appeal, Complainant addresses a new basis, sex-based discrimination. This new basis was not raised in her informal counseling or formal complaint. While the sex-based claim was part of Complainant's February 1, 2016 Report of Contact, she did not raise the basis in her informal or formal counseling. Since this basis was raised for the first time on appeal, we will not consider it here.

We note that absent a compelling reason, a complainant may not add a new basis on appeal. See Valdez v. US Postal Serv., EEOC Appeal No. 01A00196 (May 11, 2000) (citing Wodjak v. Dep't of the Treasury, EEOC Appeal No. 01952240 (Mar. 27, 1997)). See also Jeanie P. v. U.S. Postal Serv., EEOC Appeal No. 2019004085 (Jan. 16, 2020).

### *Harassment*

In considering whether any of the actions listed by Complainant, whether individually or collectively, constitute harassment, the Commission notes that in Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993), the Supreme Court reaffirmed the holding of Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), that harassment is actionable if it is sufficiently severe or pervasive that it results in an alteration of the conditions of the complainant's employment. See EEOC Notice No. 915.002 (March 8, 1994), Enforcement Guidance on Harris v. Forklift Systems, Inc. at 3. To establish a claim of harassment a complainant must show that: (1) she belongs to a statutorily protected class; (2) she was subjected to unwelcome verbal or physical conduct; (3) the harassment complained of was based on a statutorily protected class; (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. See McCleod v. Soc. Sec. Admin., EEOC Appeal No. 01963810 (Aug. 5, 1999) (citing Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982)).

Generally, in assessing whether Complainant has set forth an actionable claim of harassment, the conduct at issue must be viewed in the context of the totality of the circumstances, considering, inter alia, the nature and frequency of offensive encounters and the span of time over which the encounters occurred. See 29 C.F.R. § 1604.11(b); EEOC Policy Guidance on Current Issues of Sexual Harassment, N 915 050, No. 137 (Mar. 19, 1990); Cobb v. Dep't of the Treasury, Request No. 05970077 (Mar. 13, 1997). However, as noted by the Supreme Court in Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998): "simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'" The Court noted that such conduct "must be both objectively and subjectively offensive, [such] that a reasonable person would find [the work environment to be] hostile or abusive, and . . . that the victim in fact did perceive it to be so." *Id.* See also Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 752 (1998); Clark Cty. Sch. Dist. v. Breeden, 532 U.S. 268 (2001).

However, we note that with regard to retaliatory harassment, Complainant only needs to show that such actions are the type of action that would dissuade a reasonable employee from making or supporting a charge of discrimination. See Burlington Northern & Santa Fe Railroad. Co. v. White, 548 U. S. 53 (2006); see also EEOC Enforcement Guidance on Retaliation and Related Issues, No. 915.004 (Aug. 25, 2016); Carroll v. Dep't of the Army, EEOC Request No. 05970939 (Apr. 4, 2000).

Regarding part 1 of a prima facie case of harassment, Complainant indicated that she engaged in opposition activity.

The Commission has stated that the anti-reprisal provision of Title VII protects not only those who participate in the EEO process, but also those who oppose discriminatory employment practices. “A variety of activities has been found to constitute opposition .... Because the enforcement of Title VII depends on the willingness of employees to oppose unlawful employment practices or policies, courts have interpreted section 704(a) of Title VII as intending to provide ‘exceptionally broad protection to those who oppose such practices.’” Whipple v. Dep’t of Veterans Affairs, EEOC Request No. 05910784 (Feb. 21, 1992) (citations omitted). See Stevens v. Dep’t of Justice, EEOC Appeal No. 0120123074 (Jan. 7, 2013).

We note that Title VII protects a person “where the employee has a reasonable, good faith belief that the challenged employment practice violates Title VII, even if the belief is later found to be mistaken. . . . The mistaken belief may be one of law or of fact.” Whipple, supra quoting Wolf v. J.I. Case Co., 617 F. Supp. 858, 868 (E.D. Wis. 1985). A complainant's burden under this standard has both a subjective and objective component. Knight v. Dep’t of Transp., EEOC Appeal No. 01956704 (Jan. 5, 1998), citing Little v. U. Tech., 103 F.3d 956, 960 (11th Cir. 1997). The complainant must not only show that she subjectively, that is, in good faith, believed that her employer was engaged in unlawful employment practices, but also that her belief was objectively reasonable in light of the facts and record presented.

The record demonstrated that Complainant submitted a number of Report of Contacts against RMO1. With each ROC submitted, Complainant asserted that RMO1’s hostility substantively increased. For example, on February 1, 2016, Complainant filed a ROC following the incident in claim 1. The ROC specifically alleged that RMO1 subjected her to a hostile work environment based on her sex. In the ROC, Complainant asserted that RMO1 “expresses deep rooted resentment towards women in the workplace.” Complainant noted that RMO1 was aware of the ROCs she submitted as well as the context of each ROC. Complainant acknowledged that RMO1 was known as an aggressive supervisor but asserted repeatedly that there was a marked change in his behavior towards her upon her ROC submissions.

Regarding part 2, Complainant stated that the conduct was unwelcomed and made this clear to management officials, such as S1, that RMO1’s conduct was harassing, hostile and unwelcomed.

As to part 3, Complainant asserted that after she engaged in opposition activity, RMO1 retaliated against her. The record indicated that Complainant filed several other ROCs in conjunction with the incidents listed in support of her claim of harassment. Complainant also stated that following each ROC, RMO1’s behavior became more aggressive and targeted as detailed by claims 1 through 9. We note that the record provided no evidence to challenge Complainant’s affidavit. Upon review of the record, we find that Complainant created a temporal connection between Complainant’s protected actions and RMO1’s actions.

Regarding part 4, we find that the harassment alleged the type of action that would dissuade a reasonable employee from making or supporting a charge of discrimination. Here, following her ROCs, Complainant asserted, as detailed through claims 1 through 9, that RMO1 repeatedly subjected her to a hostile work environment.

In this matter, we note that despite the Agency's supplemental investigation, affidavits were only obtained for Complainant and S1 for claims 1 through 9. The ROI-2 does not contain any affidavits from RMO1, or other relevant witnesses. Instead the Agency speculated, without providing any evidence, as to RMO1's motivations. Additionally, there was no indication that RMO1, or the other relevant witnesses, were unavailable for the supplemental investigation. The Agency had a clear opportunity to investigate the claims but failed to do so. There is nothing in the record to contradict Complainant's allegations as to how the claims occurred. Accordingly, we find that the incidents in claims 1 through 9 happened as detailed by Complainant.

Complainant's allegation that she was treated differently is also supported by S1's testimony that RMO1 more than likely singled out Complainant. Based on the record, we find that Complainant has established that RMO1's actions could be seen to reasonably likely deter Complainant or others from engaging in protected EEO activity. Lindsey v. U.S. Postal Serv., EEOC Request No. 05980410 (Nov. 4, 1999) (citing EEOC Compliance Manual, No. 915.003 (May 20, 1998)). Therefore, based on the record, we find that Complainant has established parts 1 through 4 of an unlawful harassment claim.

Regarding part 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." 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). When the harassment does not result in a tangible employment action being taken against the employee, the employer may raise an affirmative defense to liability. The Agency can meet this defense, which is subject to proof by a preponderance of the evidence, by demonstrating: (a) that it exercised reasonable care to prevent and correct promptly any harassing behavior; and (b) that the complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided by the agency or to avoid harm otherwise. Burlington Industries, Inc., 118 S.Ct. at 2270; Faragher, 118 S.Ct. at 2293; Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, supra.

However, the affirmative 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. See id. at IV(c). In this matter, claims 7 and 9 were tangible employment actions, and were taken by RMO1. Accordingly, we find that Complainant established that the Agency violated Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., when it subjected her to a hostile work environment and discrimination based on her protected EEO activity.

### 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 accordance with the ORDER below.

ORDER

The Agency is ordered to take the following remedial action:

1. Within **ninety (90) calendar days** of the date this decision is issued, if this has not already occurred, the Agency shall take all necessary steps to remove RMO1 from Complainant's line of supervision. Only RMO1 should be moved, unless Complainant makes it known that she is willing to accept a transfer.
2. The Agency shall conduct a supplemental investigation on compensatory damages, including providing Complainant an opportunity to submit evidence of pecuniary and non-pecuniary damages. Thereafter, within **ninety (90) calendar days** of the date this decision is issued, the Agency shall determine the amount of compensatory damages to be awarded. Within thirty (30) days of determining the amount of compensatory damages, the Agency shall pay Complainant the compensatory damages.
3. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall provide eight hours of in-person or interactive training to RMO1,<sup>6</sup> regarding his responsibilities with respect to eliminating discrimination in the federal workplace.
4. Within **thirty (30) calendar days** of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against RMO1. The Commission does not consider training to be disciplinary. The Agency shall report its decision to the Compliance Officer. 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 have left the Agency's employ, the Agency shall furnish documentation of their departure date(s).
5. The Agency shall post a notice in accordance with the paragraph entitled, "Posting Order."

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Biloxi, Mississippi 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

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<sup>6</sup> The name and title of RMO1 can be found on page two of the September 4, 2018 Report of Investigation, referenced above as ROI-1.



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 (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 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if 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>

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, a 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

September 7, 2021

Date