



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Cecille W.,<sup>1</sup>  
Complainant,

v.

Michael R. Pompeo,  
Secretary,  
Department of State,  
Agency.

Appeal No. 2019001540

Agency No. DOS-0046-18

**DECISION**

On January 1, 2019, 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 December 3, 2018, 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.

**ISSUES PRESENTED**

Whether the Agency discriminated against and subjected Complainant to a hostile work environment based on her sex (pregnancy).

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as an Assistant Public Affairs Officer (APAO), FS-04, at the Agency's U.S. Mission to International Organizations in Vienna, Austria.

Complainant identified her first-level supervisor (S1), a Public Affairs Officer (PAO), as the individual who discriminated against and subjected her to a hostile work environment.

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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.

Complainant stated that over a series of days in early October 2017, following S1's miscarriage, S1 sent Complainant Facebook messages discussing S1's miscarriage, desire to curtail, and disappointment with how she felt that Complainant was treating her. Complainant averred that prior to October 2017, she and S1 were friends. However, S1 informed Complainant that she could no longer supervise her following her miscarriage and Complainant's pregnancy.

On October 15, 2017, S1 emailed Complainant informing her that they would have clearly defined portfolios. S1 explained that with this change, S1 would be responsible for "all things press." S1 instructed Complainant to "stand down from anything to do with press, clips, articles, etc." and asserted that the tasks were previously clearly delineated by their predecessors.

On October 16, 2017, S1 informed Complainant that her work requirements were overdue. S1 suggested that Complainant's work requirements include social media management, grants management with PAO oversight, film screening collaboration, International Visitor Leadership Program, and intern supervision. S1 reiterated that she would handle all press and media-related tasks. S1 added that she would be the sole representative at Public Affairs Section (PAS) senior staff meetings, which Complainant previously attended.

On October 19, 2017, S1 emailed Complainant stating that she had not exercised much oversight of the social media accounts since Complainant's arrival, but she noticed deficiencies that she wanted to address after managing the accounts during Complainant's absence. S1 told Complainant that she preferred to count the email as electronic counseling required for Employee Evaluation Report (EER) purposes. S1 added that going forward, she would be the only one to attend the weekly PAS meeting with the Front Office.

On October 19, 2017, Complainant forwarded S1's emails to the Acting Deputy Chief of Missions (S2) and the Human Resources Officer (HRO). Complainant expressed concern for alterations in her day-to-day duties.

On October 23, 2017, Complainant emailed the Assistant to the Chargé d'Affaires inquiring about her removal from the Senior Staff distribution list, who informed Complainant that he had not removed her name from the distribution list and would add it back.

On October 23, 2017, S1 emailed the HRO requesting a time to discuss Complainant's portfolio and work requirements. HRO informed S1 that a mediator would reach out to S1 and Complainant.

On October 30, 2017, Complainant and S1 participated in mediation. Following the mediation, the mediator expressed concern that due to personal circumstances, S1 was hypersensitive to remarks and interaction with Complainant. The mediator stated that it was "clear that [S1] rationalized her decisions as business appropriate and not based on personal situations." The mediator added that S1's remarks and the timing of events made it clear that S1 wanted to minimize contact with Complainant, however, it "look[ed] on face value as an effort to remove [Complainant] from places [S1] is attending and appears to lessen the exposure of [Complainant] to people and meetings she attended for over a year and a half."

On November 3, 2017, management officials counseled S1, stating that they did not believe that S1 could properly carry out her supervisory responsibilities if she minimized direct contact with Complainant. Management officials informed S1 that excluding Complainant from Senior Staff meetings and removing her from the Senior Staff distribution list was inappropriate. On November 6, 2017, Complainant informed Human Resources officials that she was removed from her social media duties and inquired about what options were available.

On November 15, 2017, the Chargé d’Affaires informed Complainant that she wanted Complainant to attend Senior Staff meetings but did not feel the same way about the PAS meeting. She acknowledged that Complainant was experiencing a very difficult situation, stating “we know it is a bad situation and we want to, and are trying, to find a solution.” On the following day, Complainant informed the Chargé d’Affaires and S2 that the daily situation was worsening and complained of minimal communication from S1 and uncertainty about her portfolio because S1 outsourced areas of her portfolio. Complainant added that S1 did not talk to her, make eye contact, or provide information. In response, the Chargé d’Affaires informed Complainant that “if a simple solution existed, it would have been found and acted upon immediately.” She assured Complainant that she was involved in daily meetings and discussions to find a solution.

On November 20, 2017, Agency officials informed Complainant that her rater would be changed from S1 to S2. Further, coordination between Complainant and S1 would be conducted through email. Finally, Complainant would continue to attend Senior Staff meetings. On November 30, 2017, Complainant reported that S1 remained in a position “where she is exercising biased supervision and decision-making over my work.”

On December 13, 2017, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of sex (pregnancy) when:

1. On October 15, 2017, Complainant’s work responsibilities were altered;
2. In October 2017, Complainant received written performance counseling; and
3. Complainant was subjected to a hostile work environment, characterized by, but not limited to inappropriate comments and being excluded from meetings and emails.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal Employment Opportunity Commission 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 Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination or harassment as alleged.

The Agency analyzed claims (1) and (2) as separate claims of disparate treatment. Regarding claim (1), the Agency determined that the record revealed that management disagreed with S1's approach and did not allow Complainant to be excluded from meetings or removed from email lists. The Agency noted that there was no indication that Complainant's work requirements ever changed. The Agency concluded that Complainant did not meet her burden of proof on the claim because management officials removed S1 from supervising Complainant and Complainant did not suffer an injury in fact.

With respect to claim (2), the Agency found that while S1 criticized Complainant's work, the record contains no evidence that those criticisms were included in Complainant's official performance documents. The Agency stated that it therefore characterized the claim as a preliminary step and not an adverse action.

As for claim (3), the Agency determined that Complainant established elements (1) through (4) of a prima facie harassment case. Specifically, the Agency found that Complainant is a member of the protected class of sex (pregnancy). Regarding elements (2), (3), and (4) of the hostile work environment claim, the Agency determined that Complainant was subjected to unwelcome conduct based on her description of S1's actions. Further, the Agency determined that S1's actions were sufficiently severe and pervasive to establish a hostile work environment. The Agency noted that the various messages S1 sent to Complainant and the actions she took to impede her ability to accomplish her work without undue consternation appeared to be related to S1's anguish that Complainant was pregnant while S1 was not. The Agency stated that it was inappropriate for S1, as a manager, to subject her subordinate employee to such treatment in work-related matters because of issues she had with Complainant's pregnancy.

The Agency concluded that Complainant failed to establish that the Agency was liable for the hostile work environment because management took immediate measures to address Complainant's concerns once they learned that Complainant was being subjected to different treatment because of her pregnancy. For example, management counseled S1 multiple times; performed an informal investigation and deemed S1's behavior inappropriate; offered Complainant the opportunity to move into a different position; changed Complainant's reporting structure; and eventually sought S1's involuntary curtailment. The Agency noted that the record is replete with evidence showing that management officials took immediate corrective action that was both detailed and effective. The Agency concluded that the record lacked evidence that Complainant suffered any adverse action based on any action by S1.

#### CONTENTIONS ON APPEAL

On appeal, Complainant contends that the FAD incorrectly stated that she was not excluded from meetings, as evidenced by email correspondence. Complainant states that evidence submitted in the investigative record along with her affidavit demonstrate that S1 provided supervisory feedback; provided mandatory clearance on Complainant's work product; chastised Complainant; made decisions about Complainant's projects and funding of those projects; and repeatedly tasked Complainant assignments.

Complainant asserts that she suffered injury from management's decisions because she required hospitalization. Complainant adds that S2 was not in a position to know or write about Complainant's work, projects, or public diplomacy initiatives. Complainant further contends that the Agency incorrectly determined that she did not establish a prima facie hostile work environment claim. Specifically, Complainant argues that management's actions were not immediate; she was never reinstated into the weekly PAS meetings and she was removed from Senior Staff meetings until mid-November. Complainant adds that management initially denied her request to have S1 removed as her supervisor and when S1 did not correct her hostile behavior, Complainant was encouraged to move to another mission, which Complainant viewed as punitive. Complainant maintains that she suffered ongoing harm during and after she was subjected to the hostile work environment.

The Agency provided a copy of the complaint record but failed to specifically respond to Complainant's appeal.

### 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

#### *Disparate Treatment—Claims (1) and (2)*

Generally, claims of disparate treatment are examined under the analysis first enunciated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hochstadt v. Worcester Found. for Experimental Biology, Inc., 425 F. Supp. 318, 324 (D. Mass.), *aff'd*, 545 F.2d 222 (1st Cir. 1976). For Complainant to prevail, she must first establish a prima facie case of discrimination by presenting facts that, if unexplained, reasonably give rise to an inference of discrimination, i.e., that a prohibited consideration was a factor in the adverse employment action. McDonnell Douglas, 411 U.S. at 802; Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978). Once Complainant has established a prima facie case, the burden then shifts to the Agency to articulate a legitimate, nondiscriminatory reason for its actions. Tx. Dep't of Comty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). If the Agency is successful, the burden reverts back to Complainant to demonstrate by a preponderance of the evidence that the Agency's reason(s) for its action was a pretext for discrimination.

At all times, Complainant retains the burden of persuasion, and it is her obligation to show by a preponderance of the evidence that the Agency acted on the basis of a prohibited reason. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); U.S. Postal Serv. v. Aikens, 460 U.S. 711, 715-716 (1983).

To establish a prima facie case of disparate treatment on the basis of sex (pregnancy), Complainant must show that (1) she is a member of a protected class; (2) she was subjected to an adverse employment action concerning a term, condition, or privilege of employment; and (3) she was treated differently than similarly situated employees outside her protected class, or there is some other evidentiary link between membership in the protected class and the adverse employment action. Keira H. v. Dep't of the Air Force, EEOC Request No. 0520140092 (Feb. 13, 2015), McCreary v. Dep't of Def., EEOC Appeal No. 0120070257 (Apr. 14, 2008); Saenz v. Dep't of the Navy, EEOC Request No. 05950927 (Jan. 9, 1998); Trejo v. Soc. Sec. Admin., EEOC Appeal No. 0120093260 (Oct. 22, 2009).

Here, Complainant established a prima facie case of discrimination based on her sex. We find that with respect to claim (1), the record reflects a finding that Complainant's work duties were altered due to her pregnancy and the Agency incorrectly concluded that there was no indication that Complainant's work requirements were ever changed. For example, S1 specifically stated that she could not supervise Complainant if Complainant was pregnant and she was not, and that it would be hard for her to be around pregnant women. Report of Investigation (ROI), at 25, 27, 154, 156, 370, 380, 398-399, 577. A review of the record indicates that S1 changed Complainant's work requirements in October 2017 and, on November 30, 2017, Complainant and S2 were working to draft Complainant's work requirements. Id. at 226. January 2018 emails indicate that press tasks remained under S1's purview and Complainant did not resume those tasks. Id. at 314-315. Agency officials returned Complainant to attending the Senior Staff meeting but maintained her exclusion from the PAS weekly meeting with the Front Office at S1's request. Id. at 538, 541. S1 asserted that she changed Complainant's work requirements to mitigate harassment from Complainant and reduce redundancies. ROI, at 367-368. However, a review of the record, management statements, and mediation notes indicate that Complainant's pregnancy was the underlying motivation in S1's changes. Moreover, S1 provided conflicting testimony regarding the level of oversight Complainant required, which was further inconsistent with Complainant's evaluation reports. Id. at 368, 370. As such, we find that Complainant has proven her claim of disparate treatment due to sex (pregnancy) with respect to claim (1).

To the extent the Agency has shown that claim (2) did not result in an adverse action, we shall consider this claim with Complainant's overall harassment claim, as discussed below.

### *Hostile Work Environment*

To establish a claim of harassment a complainant must show that: (1) they belong to a statutorily protected class; (2) they were subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on their 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). 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.

The Agency has already conceded in its final decision that Complainant established the first four elements of her prima facie hostile work environment case. The Agency held that Complainant failed to establish that it was liable for the hostile work environment, as it had established an affirmative defense. However, with respect to vicarious liability, element (5), the affirmative defense is not available to the Agency because we have found that S1's actions culminated in a tangible employment action, changed worked duties.

Moreover, even if there was no tangible employment action, we find that the Agency failed to take prompt and effective action when it was notified of S1's harassment of Complainant. While we acknowledge that the Agency initiated an informal investigation, counseled S1, and instituted a "carve-out" for evaluation purposes, we find that these actions were insufficient to meet the Agency's full responsibility to take appropriate corrective action. ROI, at 500-501, 548-549, 599-600, 621-623. Specifically, the Agency failed to fully remove S1 from supervisory authority over Complainant. According to counseling notes, it was S1 who stated that she did not want to rate Complainant and Agency officials initially encouraged S1 to work with Complainant despite the Agency's contention that it did so at Complainant's request. ROI, at 538-540. For example, on November 3, 2017, the Agency counseled S1 regarding her supervision of Complainant and instructed S1 to "provide regular guidance and coaching to help her develop professionally." Id. at 538. The record further shows that S1 still exercised some level of control over Complainant's work beyond November 2017 when the Agency changed Complainant's rater.

For example, S2 “counseled [S1] to let Complainant know if there was action she should be taking that she was not” in December 2017. ROI, at 554. Even in January 2018, S1 continued to email Complainant in a supervisor capacity. Id. at 313-314. The record reflects that although S1 was removed from completing Complainant’s rating, S1 continued to harass Complainant. Complainant indicated that she reported the harassment, but it continued. Taking only some remedial action does not absolve the Agency of liability where that action is ineffective. Logsdon v. Dep’t of Justice, EEOC Appeal No. 0120081287 (Apr. 23, 2009).

The Agency asserted that it further took detailed and effective action when Complainant was offered an alternative position, which she declined, as a solution to her concerns. However, remedial measures should not adversely affect the complainant and Complainant viewed the offer as punitive. Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors, EEOC Notice No. 915.002 (June 18, 1999), at 28-9. If it is necessary to separate the parties, then the harasser should be transferred (unless the complainant prefers otherwise). Id. The Agency did not move S1, despite requests from Complainant and S1, until April 2018 while Complainant was on maternity leave. We find that the Agency failed to take prompt and effective action. Accordingly, we find that the Agency is liable for S1’s harassment of Complainant.

For the foregoing reasons, we find that Complainant has proven that she was discriminated against and subjected to a hostile work environment based on her sex as alleged.

### 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 to the Agency for further processing in accordance with this decision and the ORDER below.

### ORDER

The Agency is ordered to take the following remedial action:

1. Within ninety (90) calendar days from the date this decision is issued, the Agency shall conduct a supplemental investigation of Complainant's entitlement to compensatory damages. The Agency is directed to inform Complainant about the legal standards associated with providing compensatory damages and give Complainant examples of the types of evidence used to support a claim for compensatory damages. Complainant shall be given 30 calendar days from the date she receives the Agency's notice to provide all supporting evidence of her claim for compensatory damages. Within thirty (30) calendar days of the date the Agency receives Complainant's submission, the Agency shall issue a new final decision determining Complainant's entitlement to compensatory damages, together with appropriate appeal rights.
2. Within ninety (90) days of the date this decision is issued, provide no less than eight (8) hours of appropriate in-person or interactive training to the management officials involved

in this case regarding their obligations under Title VII with special emphasis on harassment and responding to claims of harassment. The Commission recommends that the Agency review the following EEOC publication: Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors (June 18, 1999).

3. The Agency shall consider taking disciplinary action against the responsible management officials. The Commission does not consider training to be disciplinary action. 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).
4. Within thirty (30) days of the date this decision is issued, the Agency shall reinstate Complainant's assignments changed by S1 and remove all documentation and references to the October 2017 written performance counseling from all personnel records, including Complainant's official personnel files.
5. The Agency shall post a notice in accordance with the Posting Order below.

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 U.S. Mission to International Operations facility located in Vienna, Austria 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).

#### 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 (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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

August 19, 2020  
Date