



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

[REDACTED]  
Emilia Z.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Great Lakes Area),  
Agency.

Appeal No. 2021003600

Agency No. 1J-607-0004-21

**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 May 4, 2021, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission VACATES the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Mail Handler at the Agency's Processing and Distribution Center in Chicago, Illinois. Report of Investigation (ROI), at 42. According to Complainant, since starting her position in February 2020, she was harassed by management. ROI, at 62. The harassment continued when she became pregnant the next month. See id. Her work became extremely hard and unsafe for her pregnancy, stated Complainant, but management insisted she continue the heavy lifting until her doctor said otherwise. See id. Complainant averred that management knew that she was working unsafely during her pregnancy but denied her leave, which caused her to give birth prematurely. See id.

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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.

According to Physician's Notes for Complainant dated September 15-17, 2020, Complainant gave birth on September 12, 2020, prematurely, and she was excused from work until October 26, 2020. See id. at 108-109. Due to the premature birth, Complainant's newborn was admitted to the Neonatal Intensive Care Unit and Complainant's doctor noted that she needed time to bond with her baby. See id. Complainant stated that she requested extended Family Medical Leave Act (FMLA) dependent care for her high-risk pregnancy, from August 22, 2020, through September 12, 2020. See id. at 59-60, 64-66. Complainant averred, however, that management did not approve leave for her pregnancy. See id. at 65. Complainant believed that she should have been provided with compensation for her requested leave. See id.

On October 6, 2020, believing that the Agency's actions were discriminatory, Complainant contacted an EEO Counselor. She filed a complaint on November 13, 2020, alleging that the Agency discriminated against her on the bases of sex (female, pregnancy), disability (high-risk pregnancy), and reprisal for prior protected EEO activity when:

1. From July 28, 2020, through August 21, 2020, she was denied requested leave; and
2. From August 22, 2020, through September 12, 2020, and from October 26, 2020, and continuing, she was denied requested leave.

On November 24, 2020, the Agency issued a partial dismissal of Complainant's complaint. Therein, the Agency dismissed claim 1 for untimely EEO Counselor contact, finding that this event did not occur within 45 days of Complainant's October 6, 2020, Counselor contact. The Agency accepted claim 2 for investigation.

Following 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 Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

### CONTENTIONS ON APPEAL

Neither party filed a brief on appeal.

### ANALYSIS AND FINDINGS

#### *Partial Dismissal*

EEOC Regulation 29 C.F.R. 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity

Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action.

We find that the Agency improperly dismissed claim 1 for untimely EEO Counselor contact. As an initial matter, we find that Complainant is alleging an ongoing hostile work environment including, but not limited to, being denied a reasonable accommodation on an ongoing basis for her pregnancy. Specifically, Complainant attested that her work became extremely difficult and unsafe for her high-risk pregnancy, but management insisted she continue lifting until she was medically prohibited from doing so. Complainant averred that management knew that she was working unsafely during her pregnancy but denied her leave, which caused her to give birth prematurely. We note that a “pregnant employee may be entitled to reasonable accommodation . . . for limitations resulting from pregnancy-related conditions that constitute a disability or for limitations resulting from the interaction of the pregnancy with an underlying impairment.” See Enforcement Guidance: Pregnancy Discrimination and Related Issues, No. 915.003 § II.B. (June 25, 2015).

Complainant has alleged an ongoing hostile work environment that continued through the date she sought EEO counseling, consisting of both claim 1 and claim 2. The Commission has held that “[b]ecause the incidents that make up a hostile work environment claim “collectively constitute one unlawful employment practice, the entire claim is actionable, as long as at least one incident that is part of the claim occurred within the filing period. This includes incidents that occurred outside of the filing period that the [Complainant] knew or should have known were actionable at the time of their occurrence.” EEOC Compliance Manual, Section 2, Threshold Issues at 2-75 (rev. July 21, 2005) (citing National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 117 (2002)).

Since Complainant's hostile work environment claim is comprised of an ongoing denial of a reasonable accommodation, the matter must be characterized as a recurring violation. Specifically, the EEOC Compliance Manual, Section 2, “Threshold Issues,” p. 2-73, EEOC Notice 915.003 (July 21, 2005), provides that “because an employer has an ongoing obligation to provide a reasonable accommodation, failure to provide such accommodation constitutes a violation each time the employee needs it.” Given the continuing nature of the alleged denial of a reasonable accommodation, through the date she requested EEO counseling on October 6, 2020, we find that Complainant’s overall hostile work environment claim was timely raised.

### CONCLUSION

Accordingly, the Agency’s decision, finding no discrimination regarding claim 2, is VACATED. The decision to dismiss claim 1 is REVERSED and the entire complaint is REMANDED to the Agency for continued processing in accordance with the Order below.

### ORDER

The Agency is ORDERED to take the following action:

1. Within ninety (90) calendar days of the issuance of this decision, the Agency shall conduct and issue a supplemental investigatory report, in accordance with 29 C.F.R. § 1614.108, into Complainant's claims of ongoing discriminatory harassment/hostile work environment and denial of accommodation based on sex, disability, and/or retaliation for prior EEO activity, comprised of both claims 1 and 2. To the extent that the Agency's prior investigation examined portions of the complaint, the Agency may incorporate that pre-existing evidence into its supplemental investigatory report.
2. The Agency shall issue the supplemental investigatory report with a new notice of right to request a hearing before an EEOC Administrative Judge or an immediate final decision pursuant to 29 C.F.R. § 1614.110.

Documentation reflecting that the Agency has taken the action referenced above must be sent to the Compliance Officer as referenced below.

### 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)

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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:



Carlton M. Hadden, Director  
Office of Federal Operations

April 25, 2022  
Date