



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Krysten M.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2021005238

Agency No. 1B-007-0010-21

DECISION

On September 27, 2021, 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 August 20, 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a PS-07 General Expeditor at the Agency's DMDU Catano Annex facility in Catano, Puerto Rico. Report of Investigation (ROI) at 177-79. Complainant's shift was from 7 p.m. to 3:30 a.m. ROI at 52. According to Complainant, at the time of events giving rise to this complaint, she did not have an immediate supervisor on her shift, and her second-line supervisor was the Acting Manager of Distribution Operations (Acting Manager). ROI at 51.

Complainant averred that, in February 2021, she was expressing breastmilk for her second child every two hours. ROI at 52, 55.

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.

According to Complainant, after the birth of her first child, management had designated an office as a lactation room, covering the window with paperboard and providing a mini fridge for Complainant to store the milk. ROI at 55. Complainant stated that, after the birth of her second child, she used the same office to express milk. ROI at 55.

On February 6, 2021, Complainant went to the designated lactation room at 9 p.m., two hours after the start of her shift, but it was locked. ROI at 52. According to Complainant, she immediately notified an Acting Supervisor (Acting Supervisor-1) but Acting Supervisor-1 did not have the key to open the room and called the Postal Police. ROI at 52-53. Complainant stated that the Postal Police arrived but were unable to open the room because they also did not have the key. ROI at 53. Complainant alleged that management told her that the keys were not available and that there was no other area she could use to express breastmilk. ROI at 55. Complainant alleged that she experienced pain in her breasts because she needed to express the milk. ROI at 53.

Complainant averred that, after two hours and 45 minutes of waiting, she left work at 11:45 p.m. to go home to express milk because the pain had become unbearable. ROI at 53, 55. According to another Acting Supervisor (Acting Supervisor-2), when the Postal Police were unable to open the lactation room, "[Complainant] was sent home." ROI at 128. According to Complainant, because her home is 30-35 minutes away from work, there was only an hour or so left in her shift by the time she finished extracting the milk, so she decided to stay home. ROI at 53. Complainant alleged that, although Acting Manager was notified that Complainant left work to express breastmilk when she could not access the lactation room, he charged her four hours and nine minutes of leave without pay (LWOP) for the remainder of her shift. ROI at 53, 63. Acting Manager averred that he was not present on Saturday, February 6, 2021, which was his day off, and he identified Acting Supervisor-1 and Acting Supervisor-2 as the supervisors in charge of Complainant's shift. ROI at 66, 76-77. According to Acting Manager, one of the acting supervisors told him the following Monday that Complainant had left to go home on February 6, "but at no time I was told she went home to express milk." ROI at 77. Acting Manager stated that, if Complainant did not want to be charged LWOP, she should have told a supervisor what type of leave she wanted to use. ROI at 78.

Complainant alleged that, since the prior Manager of Distribution Operations left the facility in December 2020, she warned management that she was concerned about not being able to access the designated lactation room. ROI at 51, 55. Union Representative stated that Complainant informed him that, because the lactation room was unlocked, unauthorized employees were using the room for breaks and storage and leaving the room dirty. ROI at 106-09. According to Union Representative, he told Acting Manager and the Maintenance Supervisor that the lactation room should be under management's control to prevent unauthorized use. ROI at 106-09. Complainant stated that, although the facility had three shifts, the key to the lactation room was assigned to one person, who was not always present. ROI at 55. According to Complainant, management refused to make a copy of the key to the lactation room because it was a master key and also refused to change the lock so copies of the key could be made, even after Complainant offered to pay for the cost of changing the lock. ROI at 55.

Acting Manager stated that the lactation room was always available until Complainant's Union Representative asked maintenance to lock it and that the only reason Complainant could not access the room was because Union Representative had asked Maintenance Supervisor to lock the room. ROI at 66-70, 73-74.

According to Acting Manager, only maintenance had the key to the lactation room, and Maintenance Supervisor worked a different shift than Complainant. ROI at 73. Maintenance Supervisor stated he did not know Complainant. ROI at 133. According to Maintenance Supervisor, he locked the lactation room when Union Representative asked him to close the room because people were eating lunch there. ROI at 133. Acting Manager averred that, after he instructed that the lactation room should not be locked, he did not hear any complaints from Complainant or anyone else. ROI at 70.

Complainant alleged that, after she was denied access to the lactation room on February 6, 2021, management continued to refuse to provide her with a key. ROI at 57. According to Complainant, management's "solution" was to leave the room unlocked, which did not resolve the issue because leaving it unlocked allowed anyone to enter. ROI at 57. Complainant stated that, as a result, she was forced to clean and disinfect the lactation room every time she needed to use it. ROI at 57. Union Representative stated that, even after he raised the issue with management, people continued to use the lactation room without authorization and left the room dirty. ROI at 106-09. Acting Manager averred that he became aware that someone used the lactation room to have lunch after Complainant complained to the union that someone was using the room without authorization, but he stated that there were wipes and paper towels if cleaning was needed. ROI at 72, 79.

On February 23, 2021, Complainant entered the designated lactation room to express milk, and another woman was inside. ROI at 53. According to Complainant, at first, she thought the woman was also there to express breastmilk, but the woman said she was in the room for a training. ROI at 53. According to Complainant, two male Supervisors, Distribution Operations (SDO-1 and SDO-2) were also in the lactation room for the training. ROI at 52. Complainant noticed that a cart with a TV was connected to the only electrical outlet in the room, which she uses to plug in her breast pump. ROI at 53. Complainant immediately asked for the room to be vacated and cleaned. ROI at 53-54. Complainant stated that, although the room was vacated, it was not cleaned, so she spent 20 minutes cleaning the room herself to avoid the milk getting contaminated. ROI at 53-54. Complainant averred that the TV cart was also left in the room, which she had to move herself because it was connected to the only available outlet in the room. ROI at 53. According to Complainant, she was able to start expressing milk on February 23, 2021, approximately 35 to 45 minutes after she first entered the lactation room. ROI at 56. The record contains photos, which show a large TV cart plugged into an electrical outlet in the lactation room, blocking access to the outlet from the desk and desk chair. ROI at 64.

The Senior Plant Manager stated that the Acting Manager did not know that the lactation room was being used for that purpose, noting that the lactation room was suggested as a space to store COVID supplies. ROI at 82-88. The Senior Plant Manager stated that he did not know who kept the key for the lactation room and that the room should be cleaned daily.

ROI at 86. SDO-1 stated that maintenance takes the trash out of the lactation room daily and cleans the room three times a week. ROI at 94. SDO-2 averred that the door to the lactation room should be locked and that he was told that Complainant was the only employee with a key to the room. ROI at 101. SDO-2 described the lactation room as available at all times for lactating mothers, although he stated that he used the room once or twice outside of Complainant's work schedule because the door was left unlocked. ROI at 102.

On March 26, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of sex (pregnancy-related condition) when, on February 6 and February 23, 2021, she was not accommodated when she was not provided a proper area for lactating mothers as requested. ROI at 27, 52.

According to the record, Acting Supervisor-1 did not provide an affidavit as requested by the EEO investigator. ROI at 35, 37, 166-76. Complainant identified Acting Supervisor-1 as female. ROI at 52. With the exception of the Maintenance Supervisor, the management officials who provided investigative affidavits identified themselves as male. ROI at 66, 82, 91, 98, 113, 123. Maintenance Supervisor was not asked to identify their sex, but the EEO Investigator and Acting Manager identified Maintenance Supervisor as male. ROI at 34, 67, 70, 73-74, 131-33.

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 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 analyzed Complainant's complaint using disparate treatment analysis. As a member of a protected class, the Agency found Complainant satisfied the first element of a prima facie case of discrimination. The Agency determined that Complainant was subjected to an adverse action on February 6, 2021, because she had to leave work because the lactation room was locked. The Agency did not find that Complainant established that she was subjected to an adverse action on February 23, 2021, but assumed that she did for the purposes of the decision. The Agency found that Complainant failed to establish a prima facie case of disparate treatment because she failed to show that similarly situated employees were treated differently.

Assuming that Complainant established a prima facie case of discrimination, the Agency determined that management articulated legitimate, nondiscriminatory reasons for its actions. The Agency cited Acting Manager's statement that the lactation room was locked on February 6, 2021, because Union Representative had asked Maintenance Supervisor to lock the room and found that Acting Manager charged Complainant LWOP for her absence because he was not informed why she left work early. The Agency stated that Complainant was the only employee using the lactation room and had access to wipes and paper towels to clean the room as needed. The Agency found that Complainant failed to present any evidence of pretext. Although Complainant alleged that her sex was a factor because only women have the need for a lactation room, the Agency noted that Acting Manager, SDO-1, SDO-2, and Acting Supervisor-2 denied that Complainant's sex was a factor.

The Agency also noted that, when asked if Complainant's sex was a factor, the Senior Plant Manager stated that the situation could have been avoided if Acting Manager had investigated if the lactation room was being utilized and made sure the keys were available. The Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

The instant appeal followed.

Neither Complainant nor the Agency submitted a statement or brief on appeal.

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 Chap. 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").

Although the Agency framed Complainant's complaint as raising a claim of failure to accommodate her pregnancy-related condition, lactation, the Agency's final decision did not analyze the claim accordingly.

The Commission has held that a complainant's status as a nursing mother is protected under the Pregnancy Discrimination Act (Pub. L. 95-955) (hereafter PDA). See O'Brien v. Nat'l Sec. Agency, EEOC Appeal No. 01951902 (May 27, 1997). The PDA requires that an agency treat women affected by pregnancy, childbirth, or related medical conditions the same for all employment related purposes, as other persons not so affected but similar in their ability or inability to do work. 42 U.S.C. § 2000e(k).

An employee who is lactating "must have the same freedom to address such lactation-related needs that she, and her co-workers, would have to address other similarly limiting medical conditions." See EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues (Pregnancy Guidance), EEOC Notice 915.003, I (A)(4)(b) (rev. June 25, 2015). Discriminating against a woman who is lactating or expressing breast milk violates Title VII and the PDA. Equal Emp't Opportunity Comm'n. v. Houston Funding II, Ltd., 717 F.3d 425, 430 (5th Cir. 2013). Title VII mandates the provision of a reasonable accommodation for an employee who is lactating. Heidi B. v. Dep't of Health and Human Servs., EEOC Appeal No. 0120171750 (Feb. 28, 2019) (citing Gonzales v. Marriott Int'l, Inc., 142 F. Supp. 3d 961, 978 (C.D. Cal. 2015) (citing Young v. U. Parcel Serv., 575 U.S. 206 (2015))), req. for recon. denied, EEOC Request No. 2019002792 (June 25, 2019).

A complainant alleging that the denial of an accommodation for a pregnancy-related condition constituted disparate treatment sex discrimination may state a prima facie case by showing that (1) she belongs to the protected class; (2) she sought accommodation; (3) the agency did not accommodate her; and (4) that the agency did accommodate others “similar in their ability or inability to work.” Young, 575 U.S. at 229.

An agency may then seek to justify its refusal to accommodate the complainant by relying on “legitimate, nondiscriminatory” reasons for denying her accommodation. Young, 575 U.S. at 229 (citing McDonnell Douglas v. Green, 411 U.S. 792, 802 (1973)). “That reason normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those (‘similar in their ability or inability to work’) whom the employer accommodates.” Id.

The complainant may then show that the agency's reasons are pretextual, which can be done “by providing sufficient evidence that the employer's policies impose a significant burden on pregnant workers, and that the employer’s ‘legitimate, nondiscriminatory’ reasons are not sufficiently strong to justify the burden, but rather--when considered along with the burden imposed--give rise to an inference of intentional discrimination.” Young, 575 U.S. at 229.

Based on the record, Complainant belongs to the protected class and sought accommodation. We find that Complainant was denied a pregnancy-related accommodation on February 6, 2021, when she was unable to access the lactation room, management was unable to provide an alternate location for Complainant to express milk, and Complainant had to go home to express the milk. On February 23, 2021, Complainant was not able to use the lactation room for 35 to 45 minutes because three employees, including SDO-1 and SDO-2, were using the lactation room for training. On that occasion, Complainant had to move equipment and clean the room before she could start expressing milk. Finally, considering whether the Agency accommodated others similar in their ability or inability to work, there is evidence in the record that non-lactating employees were using the lactation room for their lunch breaks and rest breaks. We find that Complainant has therefore established a prima facie case of pregnancy discrimination. See Puente v. Dep’t of Homeland Sec., EEOC Appeal No. 07A30018 (Oct. 15, 2003) (complainant established prima facie case of pregnancy discrimination when she was denied a place to express milk and similarly situated male employees were permitted to use breaks for bodily functions, personal hygiene, personal purchases, and personal errands).

We do not find that the Agency provided legitimate, nondiscriminatory reasons for its failure to accommodate Complainant. Acting Manager stated that Complainant was denied access to the lactation room on February 6, 2021, because Union Representative asked for the lactation room to be locked. However, the preponderance of the evidence in the record establishes that Union Representative asked management to secure the lactation room because employees were using the space for breaks, making the space unavailable for lactating employees and dirty.

In response, Maintenance Supervisor locked the lactation room and made no arrangements for lactating employees to access the room, even though Maintenance Supervisor was the only employee with access to the key and did not work the same shift as Complainant, whose concerns Union Representative had brought to management. Complainant was denied a key to the lactation room even after she offered to pay for the cost of changing the lock. As a result of being denied accommodation, Complainant was forced to endure pain for two hours and 45 minutes while management and the Postal Police attempted to open the lactation room to no avail before Acting Supervisor-1 sent Complainant home. Complainant was charged four hours and nine minutes of LWOP as a result.

Moreover, even after Complainant was denied access to the lactation room on February 6, management failed to ensure secure access to the lactation room. Instead of providing Complainant a key to the lactation room or ensuring access to the key on all shifts, management left the door unlocked, allowing unauthorized personnel to use the lactation room for breaks, storage, and, on February 23, 2021, a training session attended by supervisors. The Agency's final decision cited the Senior Plant Manager's statement that the situation could have been avoided if Acting Manager had been aware that the lactation room was being used by a lactating employee in support of its determination that management articulated a legitimate, nondiscriminatory explanation for its actions. However, we find that the Senior Plant Manager's statement tends to show that Acting Manager did not act appropriately. The discrepancies between various management officials' affidavits about who had access to the lactation room key and how often the lactation room was cleaned also discredited the Agency's asserted legitimate, nondiscriminatory reasons. Accordingly, we find that Complainant established that she was subjected to discrimination based on her pregnancy-related condition.

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 action in accordance with this decision and the ORDER below.

ORDER

The Agency shall take the following remedial actions:

1. The Agency shall determine the amount of compensatory damages to which Complainant is entitled and pay Complainant that amount:
 - a. Within 60 calendar days of the date this decision is issued, the Agency shall conduct a supplemental investigation with respect to Complainant's claim of compensatory damages.

- i. The Agency shall allow Complainant to present evidence in support of her compensatory damages claim. See Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993).
 - ii. Complainant shall cooperate with the Agency in this regard, including by responding to Agency requests for information and by completing any Agency forms. Complainant shall reply to any Agency requests for information within 30 calendar days.
 - b. Within 30 calendar days of the completion of the supplemental investigation, the Agency shall issue a final decision, with appeal rights to the Commission, addressing the issues of compensatory damages.
 - c. Within 60 calendar days of determining the amount of compensatory damages due Complainant, the Agency shall issue a check to Complainant for the undisputed amount.
2. Within 90 calendar days of the date this decision is issued, the Agency shall restore any leave (including reimbursement for leave without pay) taken by Complainant because of the Agency's failure to accommodate her pregnancy-related condition.
 3. Within 90 calendar days of the date this decision is issued, the Agency shall provide a minimum of four hours of in-person or interactive EEO training to, at a minimum, the following management officials: Acting Manager, Maintenance Supervisor, the Senior Plant Manager, Acting Supervisor-1, Acting Supervisor-2, SDO-1, and SDO-2. The required training shall address unlawful discrimination under federal EEO laws, with a special emphasis on pregnancy discrimination and management's obligations under Title VII and other federal EEO laws. The Commission does not consider training to constitute disciplinary action. For assistance in obtaining the necessary training, the Agency may contact the Commission's Training and Outreach Division via email at FederalTrainingandOutreach@eeoc.gov.
 4. Within 120 calendar days of the date this decision is issued, the Agency shall report whether it proposed discipline against the responsible management officials, including, at a minimum, Acting Manager and Maintenance Supervisor. 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 employment, then the Agency shall furnish documentation of their departure date(s).
 5. Within 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 DMDU Catano Annex facility in Catano, Puerto Rico 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 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:



Carlton M. Hadden, Director
Office of Federal Operations

February 8, 2023

Date