No. 15-3634

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Heather Hoekstra,	)	
	)	
Plaintiff-Appellant,	)	Appeal from the U.S. District Court
	)	for the Northern District of Illinois
v.	)	
	)	No. 13-cv-2814
Ford Motor Company,	)	
	)	The Honorable
Defendant-Appellee.	)	Samuel Der-Yeghiayan
	)	
	)	

BRIEF AND REQUIRED SHORT APPENDIX OF APPELLANT

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Attorney's Signature: s/ Christopher Keleher Date: December 7, 2015

Attorney's Printed Name: Christopher Keleher

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JURISDICTIONAL STATEMENT

Plaintiff Heather Hoekstra sued Defendant Ford Motor Company under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, for sexual harassment and retaliation, along with a supplemental state claim under the Illinois Whistleblower Act, 740 ILCS § 174/15. Doc. 12.

The district court had federal question jurisdiction per 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a), and exercised jurisdiction over the supplemental state law claim via 28 U.S.C. § 1367(a). On October 27, 2015, the district court granted summary judgment for Ford on the federal claims and dismissed the remaining state law claim without prejudice. Doc. 64.

On November 24, 2015, Hoekstra filed a timely notice of appeal. Doc. 68. The Seventh Circuit Court of Appeals has jurisdiction under 28 U.S.C. §§ 1291 and 1294, which bestow jurisdiction on courts of appeals from all final decisions of the district courts.

STATEMENT OF THE ISSUES

I. Heather Hoekstra suffered years of unwanted grabbing, rubbing, and pulling by male co-workers and supervisors. Hoekstra also fended off comments such as "shake that ass," "nice boobs," "big tits," "sexy," and inquiries about her lingerie and bra size.

Reviewed *de novo*, was this harassment severe or pervasive?

II. Hoekstra repeatedly objected to the degradation, and while multiple employees were "counseled" by Ford, they were never disciplined. Meanwhile, the harassment of Hoekstra persisted, leaving Hoekstra to admit, "I'm actually scared to go to work."

Reviewed *de novo*, did Ford adequately respond to the harassment?

III. Hoekstra's complaints about harassment were "common knowledge" among her coworkers. Hoekstra experienced intimidation and threats while being passed over for promotions.

Reviewed *de novo*, did Hoekstra establish a question of fact regarding retaliation?

STATEMENT OF THE CASE

Shortly after graduating high school, Heather Hoekstra began working for Ford Motor Company. Doc. 55-1 at 8. She started in the fall of 1996 at Ford's Chicago Stamping Plant, holding various positions in the pressroom and assembly sides of the plant. *Id.* at 11-12. Since 2004, Hoekstra has been an inspector in the quality division. *Id.* at 15.

Wayne Rosentrader harasses Hoekstra

In the late 1990s, supervisor Wayne Rosentrader commented to Hoekstra about her looks and deliberately brushed himself against her when he walked behind her. Doc. 55-1 at 25-26. Hoekstra reported this conduct to Ford's Labor Relations Department and area manager Lou Stefanovic, but nothing was done. *Id.* at 26. In fact, Labor Relations told Hoekstra to return to the floor. Doc. 55-4 at 48, ¶ 2.

Carl Horton harasses Hoekstra

In 2001, supervisor Carl Horton "continually harassed" Hoekstra with sexual comments. Doc. 55-1 at 28; Doc. 55-2 at 195-96. On one occasion, he walked up behind Hoekstra and whispered in her ear. Doc. 55-1 at 20, 27-29. Another time he told Hoekstra, "I'm sorry. I didn't get to harass you today. I'll be back later to harass you." *Id.* at 30. He once admitted to Hoekstra, "Don't you get it? I'm hitting on you." *Id.* When she had difficulty putting a part onto the line, she asked Horton if the problem was fixed. *Id.* at 31. He responded by

grabbing Hoekstra's hands and telling her he would fix the problem "because he might need [Hoekstra's] hands someday." *Id*.

On April 17, 2003, Hoekstra filed a written complaint concerning, *inter alia*, Horton's harassment. Doc. 55-1 at 36-37. She followed up on June 6, 2003, with a more detailed complaint to Labor Relations. *Id.* at 40. Labor Relations investigated Horton but denied Hoekstra's claims. *Id.* at 162. She was ordered to continue working with Horton, where she experienced his retaliation, including reduced pay and efforts to fire her. *Id.*; Doc. 55 at ¶¶ 17-19. Horton's harassment lasted from 2001 through 2003. Doc. 55-1 at 40-41.

Ricky Miracle and Jay Soucci harass Hoekstra

In 2002, two coworkers, Ricky Miracle and Jay Soucci, also made comments to Hoekstra. Doc. 55-1 at 54. Miracle asked Hoekstra if she had AIDS and repeated a rumor that she had contracted the virus. *Id*. at 177. The ongoing harassment in 2002 caused Hoekstra to have an anxiety attack requiring hospitalization. *Id*. at 53.

Brian Ripple and Michael Scalzetti harass Hoekstra

In 2003, coworker Brian Ripple knuckle-punched Hoekstra in the arm after a conversation about Carl Horton's harassment. Doc. 55-1 at 49-50. Also in 2003, coworker Michael Scalzetti came up behind Hoekstra and forcefully squeezed her neck and shoulders. *Id*. at 51. Hoekstra believes Scalzetti knew she had complained about Horton. *Id.* at 51-52.

Bennie Burr harasses Hoekstra

Bennie Burr was a supervisor when Hoekstra worked in the pressroom area between 2007 and 2009. Doc. 55-1 at 160. He called her "beautiful" and "sexy." *Id.* He also said she was "silly," "stupid," and had Tourette's. *Id.* Hoekstra did not report Burr's comments, fearing retaliation. *Id.* at 161-62.

Jim Guth and Rodney Zea harass Hoekstra

Around 2009, Jim Guth asked Hoekstra if she wore lingerie for her husband. Doc. 55-1. at 188-89. Guth also told her she has "porn hair." *Id.* In 2009, Rodney Zea told Hoekstra "you just need to bat your eyes to get things done." *Id.* While she did not report Guth or Zea, a supervisor overheard Guth's comments. *Id.* at 189-90. Moreover, Hoekstra's reticence was based "in fear of retaliation . . . of losing my job . . . of having to work with these people." *Id.*

Erik Suyak harasses Hoekstra

Erik Suyak supervised Hoekstra and inappropriately touched her in 2010. Doc. 55-1 at 163. Suyak, who had told Hoekstra she was beautiful, put his hand on her back. *Id.* On another occasion, he rubbed her shoulder and bra area. *Id.* Hoekstra did not report Suyak, testifying she was "discouraged from reporting harassment." *Id.* at 164; Doc. 55-4 at 48, ¶ 12.

Andy Vargavich harasses Hoekstra

Coworker Andy Vargavich asked Hoekstra out in July of 2011. Doc. 55-1 at 180. Part of the courtship included comments such as "you have nice boobs"

and "you have [a] nice chest." *Id*. He also inquired about her bra size. *Id*. Hoekstra told Labor Relations about these remarks when she was called in to discuss a separate incident involving Vargavich and another female employee. *Id*. at 187; Doc. 55-2 at 14-15.

Al Wills harasses Hoekstra

In September of 2011, Al Wills, who oversaw Hoekstra's work, grabbed at Hoekstra's hands. Doc. 55-1 at 57-59. After Hoekstra backed away, he "reached around the right side of me ... and groped me on the side, and grabbed the side of my breast and got a hard grip on me and jerked and squeezed me into him as hard as he could." *Id.* at 57. Hoekstra was in shock. *Id.* at 63. After collecting her thoughts, she told Wills, "Don't ever touch me again," prompting him to apologize. *Id*.

This was not the first time Wills touched Hoekstra. He once put his hand on her back and bra area, "in a rubbing motion." Doc. 55-1 at 66. On another occasion, he rubbed her left shoulder, around the bra strap, and said he was "watching" her. *Id.* at 66-67. When Hoekstra reported Wills to Labor Relations in 2011, union representative and Ford employee Charlie Evans asked Hoekstra if she had a "vendetta" against Ford. *Id.* at 71.

Labor Relations interviewed eight witnesses regarding Wills' conduct. One witness confirmed Wills embraced Hoekstra. Doc. 62, Ex. 9 at Bates No. 3885. Another witness indicated he had seen Wills touching Hoekstra on the

arm. *Id.* at Bates No. 3886. Wills was initially suspended six days but then reinstated with full back pay. Doc. 55-2 at 19-21.

Perry Haynes threatens Hoekstra

Several days after Hoekstra reported Wills, she was walking down an aisle when Perry Haynes pretended to hit her with an electric powered scooter he was driving. Doc. 55-1 at 92. A few days later, Haynes actually swerved at her. *Id.* She reported Haynes to Labor Relations because she believed Haynes was retaliating against her for reporting sexual harassment. *Id.* Labor Relations found Haynes was joking and counseled him. Doc. 55-2 at 24, 113. Under Ford policy, counseling is not discipline. *Id.* at 113-14.

Eugene White harasses Hoekstra

On September 2, 2011, Hoekstra was walking down a hallway when Eugene White approached her and said, "You're my girl" and went to hug her. Doc. 55-1 at 83. Hoekstra shook her head and said "No." *Id.* Still, White "wrapped his arms around me – my arms were pinned tight to my sides – and he pressed himself up to the left side of me, the left side of my body and my breast, and he pressed himself hard against me and wrapped his arms around me." *Id.* at 84. She pushed him off and told him to stop. *Id.* at 83-84. On another occasion, White tried to put his arm around Hoekstra's shoulder. *Id.* at 86. Hoekstra expressed her displeasure to him. *Id.*

Hoekstra went immediately to Labor Relations about the September 2 touching. *Id*. at 88-89; Doc. 62, Ex. 11 at Bates No. 3868. Hoekstra and White were interviewed. Doc. 55 at ¶ 54. Labor Relations denied her claim, and White was counseled. Doc. 48-2 at 50.

Hoekstra's extension cord is removed and hidden

On September 6, 2011, someone took the extension cord powering the fan at Hoekstra's station, leaving Hoekstra overheated. Doc. 55-1 at 92. It was later found on a beam above her work area. While Hoekstra did not know why the cord was hidden, she believed it was in response to her harassment complaints. *Id*. at 102. Hoekstra complained to Labor Relations. *Id*. at 92.

Ray Vega harasses Hoekstra

Ray Vega was Hoekstra's immediate supervisor. Doc. 55-1 at 106. In 2003, Vega came up behind Hoekstra, pulled her ponytail, laughed, and walked away. *Id*. at 107. In 2008, he again came up behind her and pulled her hair. *Id*. While Vega laughed, Hoekstra dug her nails into his hand and told him to stop. *Id*. at 108. Hoekstra reported Vega to Labor Relations in 2011. *Id.*

On March 14, 2012, Vega came up behind Hoekstra and bumped her and rubbed himself up against her. Doc. 55-1 at 109-11. Hoekstra explained, "[t]here was no one around the area. There was no reason why he couldn't avoid doing that to me. He intentionally did that to me." *Id*. at 112. Agitated, Hoekstra told him to stop touching her. *Id*. Complaining to Labor Relations,

Hoekstra said, "Vega just walked away. He doesn't care – he's a harasser, a sex offender." *Id*. at 114. Hoekstra later elaborated: "when he bumped and brushed me, I felt like he rubbed his body up against me in a sexual way. So, to me, that's considered a sex offender." *Id*.

Vega admitted to pulling Hoekstra's hair. Doc. 55-3 at 66. He could not recall if he brushed against Hoekstra. Doc. 55-3 at 85. Labor Relations denied Hoekstra's claim and counseled Vega. Doc. 55 at ¶ 64. Despite Labor Relations' warning not to contact Hoekstra, on August 12, 2012, Vega (still her supervisor) texted her, "Oh im pretty sure u will accomplish a lot," and, after no reply, he texted her "Be that way." Doc. 55-1 at 117; Doc. 48-2 at 116. Vega says he sent the texts accidently. Doc. 55-4 at 48, ¶ 66; Doc. 48-2 at 114.

Unknown employees harass Hoekstra

In March of 2012, Hoekstra was die setting the production line. Doc. 55-1 at 129. She asked an unidentified male coworker how long the die set would take, and he responded by asking her about "getting the attention of a good looking woman." *Id.* He then "looked at my back side, my butt area, and told me I had no ass and that I was losing my ass." *Id*. Hoekstra was shocked, and as he walked away, she yelled at him. *Id.* at 131.

Hoekstra reported the incident to Labor Relations, which subsequently identified the man as Mark Bowman. Doc. 55 at ¶ 70. Bowman admitted commenting about getting the attention of a female forklift driver, but denied

mocking Hoekstra's body. *Id*. Bowman was counseled, but not disciplined. *Id*.

Also at various times in the mid-2000s, Hoekstra endured remarks by other unknown men at the Chicago Stamping Plant such as "look at that ass," "shake that ass," "I want to get in that box, both of them," and "big tits." Doc. 55-1 at 185-88. Hoekstra did not report these comments. *Id*.

Finally, in September of 2014, a plant security guard named Justin (last name unknown), cornered Hoekstra and made suggestive comments to her. Doc. 55-1 at 182. Hoekstra reported the guard's conduct to her union rep. *Id*.

Tyrone Lloyd threatens Hoekstra

In March of 2012, coworker Tyrone Lloyd made a punching motion at Hoekstra's face, coming within inches of hitting her. Doc. 55-1 at 131-33. Hoekstra reported the incident to Labor Relations. *Id*. at 134.

Jerry Summit harasses Hoekstra

Jerry Summit is a coworker who in late 2012 "slightly bent over" and bumped Hoekstra with the lower part of his body and called Hoekstra "trouble." Doc. 55-1 at 140; Doc. 55 at ¶ 75. She reported Summit to union rep Charlie Evans. Doc. 55-1 at 145. She went to Evans because "I was reporting so many people to Labor Relations, I was becoming in fear of retaliation from the coworkers as well as management...." *Id*. at 146.

Jessie Landingham harasses Hoekstra

On March 10, 2013, Hoekstra was talking with Jessie Landingham

when "he patted me on the arm and then he patted me on my butt." Doc. 55-1 at 144. She reported him, and while Hoekstra listed potential witnesses, none were interviewed, and Landingham was counseled but not disciplined. *Id*. at 145; Doc. 55-2 at 97-98. After Labor Relations spoke to Landingham, he saw Hoekstra and told her to "stay over there." Doc. 55-1 at 146-47.

Don Cooper harasses Hoekstra

In early 2013, fellow inspector Don Cooper was in a meeting with Hoekstra. Doc. at 55-1 at 148. He stood up, and told Hoekstra, who was sitting on the edge of a desk: "'You have a yeast infection...' He made a fist, and he punched me as hard as he could into my right leg – it was hard, it hurt, it made a small bruise on my leg – and he told me not to sit on [a coworker's] desk because that's where she puts her lunch box." *Id.* at 149. Hoekstra reported Cooper a few months later, waiting because she feared retaliation. *Id*. at 150. Cooper received counseling but no discipline. Doc. 55-2 at 113-14.

The toll on Hoekstra

Hoekstra is in "constant fear" of harassment and retaliation and suffers from anxiety and panic attacks. Doc. 55-1 at 22. "I'm actually scared to go to work." *Id*. Her doctors confirm the work environment has caused panic, stress, and anxiety disorders. Doc. 55-4 at 48, ¶ 15. They have prescribed anxiety medication that restricts childbearing. *Id.*

Additionally, Hoekstra applied for promotions in the 2000s. Doc. 55-1 at

199-02. She was passed over twice for inspector positions, which went to male employees. *Id*. Further, she lost a promotion in 2005 to Andre Keyes, who had less seniority. *Id*. at 226; Doc. 55-4 at 48, ¶ 5. Hoekstra was also subjected to less favorable work assignments, and given additional work. Doc. 55-4 at 48, ¶ 8; Doc. 55-1 at 229. Finally, Hoekstra asserts Ford "has not disciplined my harassers [or] thoroughly investigated my complaints of harassment." Doc. 55-4 at 48, ¶ 11.

Ford's anti-harassment policy

Ford prohibits "undignified conduct, verbal or physical." Doc. 55 at ¶ 49. It defines harassment as conduct or comments that an employee deems "unwelcome." Doc. 55-2 at 96-99. Rebecca Taylor, who works in Ford's Labor Relations Department and evaluated most of Hoekstra's complaints, assumes "that since the person is filing a complaint [the conduct] is unwelcome." Doc. 55-1 at 145. Upon the filing of a complaint, Labor Relations interviews the complainant, the accused, and any witnesses. Doc. 55-1 at 88.

Taylor described Hoekstra as "more sensitive" and someone who "thinks things that are more offensive than other people do." Doc. 55-2 at 55. Taylor also viewed some of the conduct Hoekstra experienced as not harassing:

> Q. Do you personally consider being punched in the leg unwelcome contact in the workplace?
> A. Personally, I would not consider that unwelcome.

Q. Would you consider being tapped on the butt by someone in the workplace unwelcome contact?
A. I mean, the context is important, but in general, yes, if somebody touched me on the butt.

Q. Does Ms. Hoekstra's complaint indicate she considered it unwelcome contact?
A. She doesn't say it was unwelcome.

Doc. 55-2 at 100-01.

Anti-harassment training

Ford asserts its employees receive training on the anti-harassment policy, which is available on bulletin boards in the plant, along with anti-harassment refreshers. Doc. 55-1 at 182-84; Doc. 48-2 at 34-36. However, Al Wills did not recall seeing the harassment policy or postings. Doc. 55-4 at 3-6. Don Cooper indicated the policy was not on the bulletin board. Doc. 55-3 at 134-35. Hoekstra denies receiving anti-harassment refreshers. Doc. 55-4 at 48. Moreover, Wills was last trained on harassment policy in 2004, while he was at the Dearborn, Michigan facility. Doc. 48-2 at 97. Cooper, Horton, and Vega were last trained on harassment policy in 2001. Doc. 55 at ¶ 122; Doc. 55-2 at 194; Doc. 55-3 at 137-38; Doc. 62, Ex. 19 at Bates No. 4706. Hoekstra's last sexual harassment training was in mid-1990s. Doc. 55-1 at 193.

Class-wide violations at the Chicago Stamping Plant

The EEOC found reasonable cause that Ford discriminated against Hoekstra "and a class of employees based on their sex, female, in that they

were subjected to sexual harassment...." Appendix at A17-A18. It further determined there was reasonable cause to find Ford retaliated against Hoekstra "and a class of employees for engaging in protected activity...." *Id*.

Ford moves for summary judgment

The district court granted Ford's motion for summary judgment. The court described the evidence as follows: "[t]he accused persons harassed her or retaliated against her only for a limited period of time or in some cases in only one isolated instance." Appendix at A2. However, the court did not decide the severe or pervasive element of sexual harassment, instead finding no employer liability existed. *Id.* at A6-A13. "The undisputed facts show that Ford has promulgated an anti-harassment policy and taken reasonable steps to prevent unlawful harassment in the workplace." *Id*. at A12.

The court also rejected Hoekstra's retaliation claim. The court noted the incident of Perry Haynes swerving an electric powered scooter at Hoekstra but found nothing "tying Haynes to others associated with alleged harassment or retaliation." Appendix at A14. The court further found that Hoekstra did not point to similarly situated employees outside the protected class who were treated more favorably. *Id*. at A15.

Hoekstra appeals.

SUMMARY OF ARGUMENT

Heather Hoekstra's body amused and gratified the male employees of Ford's Chicago Stamping Plant. Felt, pressed, and rubbed, Hoekstra endured a baffling array of physical touching, punctuated by lewd comments and intimidation. Hoekstra's tormentors included co-workers and supervisors alike, and her humiliation spanned over a decade, a testament to Ford's ostrich-like approach to harassment.

Hoekstra repeatedly objected to the degradation through the designated proper channel, Labor Relations. She also complained to her union representative. But the perfunctory investigations did nothing to quell the consistent harassment. Faulting the "sensitive" Hoekstra for not obliging a punch in the leg or pat on the buttocks, Rebecca Taylor's untenable approach to workplace touching doomed Hoekstra's complaints. Employer liability exists because Hoekstra reported 13 men and Ford disciplined no one. In fact, the employees and management of the Chicago Stamping Plant regarded Hoekstra's rights with all the concern of an elephant for a flea.

As for retaliation, the record is replete with issues of fact. For employees who routinely objectified Hoekstra, retaliation was a foregone conclusion. The intimidation, threats, and slights Hoekstra experienced as part of the hostile work environment establish she was punished for having the temerity to speak out. Reviewed *de novo*, the Court should reverse.

ARGUMENT

I. The Standard of Review Is *De Novo*.

The Court reviews a district court's grant of summary judgment *de novo*. *Malin v. Hospira,* 762 F.3d 552, 558 (7th Cir. 2014). In deciding whether summary judgment is proper, the Court views the evidence and all reasonable inferences in Hoekstra's favor. *See id.* at 554. The Court approaches summary judgment in employment discrimination cases "with special caution." *Courtney v. Biosoundof, Inc.*, 42 F.3d 414, 423 (7th Cir. 1994).

II. Hoekstra Was Sexually Harassed Because The Conduct Was Physically Threatening, Humiliating, and Persistent.

A. Ford's Chicago Stamping Plant is the epitome of a hostile work environment.

Title VII prohibits a hostile work environment. *Vance v. Ball State Univ.,* 133 S.Ct. 2434, 2441 (2013). A hostile work environment claim of sexual harassment exists if Hoekstra shows: (1) the work environment was subjectively and objectively offensive; (2) her gender was the cause of the harassment; (3) the conduct was severe or pervasive; and (4) a basis for employer liability exists. *See Orton-Bell v. Indiana*, 759 F.3d 768, 773 (7th Cir. 2014).

Hoekstra can use prior acts as background evidence to support a timely Title VII claim. *See National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002). In *Malin v. Hospira,* the Court considered events occurring

more than 300 days before plaintiff's EEOC charge as circumstantial evidence of a retaliatory pattern. 762 F.3d at 558. Thus, discriminatory intent is determined by considering all the facts, not by seizing on a specific cut-off date by which conduct must occur. *Paz v. Wauconda Healthcare & Rehab. Ctr., LLC,* 464 F.3d 659, 666 (7th Cir. 2006). This principle applies here as Hoekstra's harassment spans a decade. Any gap in the ongoing harassment Hoekstra suffered does not make her claim untimely because each incident is considered as part of a whole. Further, as degrading as Hoekstra's work setting is, the problems transcend her. The EEOC found class-wide violations of sexual harassment at the Chicago Stamping Plant. Appendix at A17-A18.

B. Because Hoekstra was repeatedly felt up, the harassment was severe or pervasive.

The district court did not resolve whether the conduct endured by Hoekstra was severe or pervasive. Appendix at A5. Still, it downplayed Hoekstra's claims: "[t]he accused persons harassed her or retaliated against her only for a limited period of time or in some cases in only one isolated instance." *Id.* at A2. This narrow reading of a record unfolding over many years should be rejected. Moreover, it is improper to carve up incidents of harassment and "then separately analyze each incident, by itself...." *Hall v. City of Chicago*, 713 F.3d 325, 331 (7th Cir. 2013) (quoting *Mason v. S. Ill. Univ. at Carbondale*, 233 F.3d 1036, 1045 (7th Cir. 2000)).

1. What the Court deems "severe or pervasive."

In evaluating the severity of harassment, a dichotomy is used:

> On one side lie sexual assaults; other physical contact, whether amorous or hostile, for which there is no consent express or implied; uninvited sexual solicitations; intimidating words or acts.... On the other side lies the occasional vulgar banter, tinged with sexual innuendo, of coarse or boorish workers.

EEOC v. Mgmt. Hospitality of Racine, Inc., 666 F.3d 422, 435 (7th Cir. 2012) (quoting *Baskerville v. Culligan Int'l Co.,* 50 F.3d 428, 430–31 (7th Cir. 1995)).

This case falls on the serious side of the ledger. Hoekstra was subjected to virtually every sordid condition outlined above. Moreover, "even one act of harassment will suffice if it is egregious." *Hostetler v. Quality Dining, Inc.,* 218 F.3d 798, 808 (7th Cir. 2000). And uninvited physical contact with intimate areas is among the most severe types of harassment. *Patton v. Keystone RV Co.,* 455 F.3d 812, 816 (7th Cir. 2006). The harassment here was thus severe or pervasive as a matter of law. Five cases confirm this.

First, in *EEOC v. Mgmt. Hospitality of Racine,* a supervisor told the plaintiff "he wanted to 'f--- her,' propositioned her for three-way sex with his girlfriend, and told her she was 'kinky' and liked 'rough' sex." 666 F.3d at 432. The supervisor also groped her buttocks. *Id*. A jury found for plaintiff on her

sexual harassment claim and the Court affirmed the denial of the employer's post-trial motion. *Id*.

Second, in *Orton-Bell v. Indiana*, the plaintiff's supervisor ogled her and said, "her ass looked so good that it would cause a riot." 759 F.3d at 775. Walking through the intake area of the prison where she worked, the plaintiff was searched more thoroughly while men watched and made sexual comments. *Id*. Because this conduct was severe or pervasive, the Court reversed summary judgment for the employer. *Id*.

Third, in *Boumehdi v. Plastag Holdings, LLC,* the Court reversed summary judgment for the employer because 18 sex-based comments to the plaintiff over ten months could show a hostile work environment. 489 F.3d 781, 786 (7th Cir. 2007).

Fourth, in *Berry v. Chicago Transit Authority*, the plaintiff experienced a single incident of a co-worker lifting her by her breasts, holding her up, rubbing her body against his crotch, and dropping her. 618 F.3d 688, 689 (7th Cir. 2010). Summary judgment for the employer was reversed. *Id*.

Finally, in *Worth v. Tyer,* an allegation that a supervisor touched the plaintiff's "breast near the nipple for several seconds" constituted a hostile work environment on its own. 276 F.3d 249, 268 (7th Cir. 2001).

The conduct in these five cases was of a far shorter duration, involved less physical contact, and generally less vulgar than that experienced by

Hoekstra. Yet in these five cases, a jury decided the issue of hostile work environment.

2. What happened to Hoekstra.

Numerous men at Ford's Chicago Stamping Plant had uninvited physical contact with Hoekstra's intimate areas. Al Wills, who oversaw Hoekstra's work, grabbed Hoekstra's breast. Doc. 55-1 at 57. Eugene White grabbed and pinned Hoekstra's body against his. *Id.* at 82-84. Supervisor Ray Vega pulled Hoekstra's hair and rubbed himself against her. *Id.* at 107-11. Supervisor Erik Suyak rubbed Hoekstra's back. *Id.* at 163-64. Jerry Summit rubbed himself against Hoekstra's buttocks. *Id.* at 140. Don Cooper punched Hoekstra in the leg. *Id.* at 149. Jesse Landingham felt Hoekstra's buttocks. *Id.* at 144. All of this unwanted touching occurred between 2010 and 2013.

Prior to 2010, Hoekstra deflected suggestive comments from supervisor Carl Horton for two years, during which time he grabbed Hoekstra's hands and whispered in her ear. Doc. 55-1 at 20, 27-29. Meanwhile, Hoekstra was punched by Brian Ripple and forcefully squeezed by Michael Scalzetti. Doc. 55-1 at 49-51, 54, 177. Finally, Hoekstra fought off advances by supervisor Wayne Rosentrader while he brushed up on her. *Id.* at 25-26. Viewing the incidents as a whole, the harassment was both severe and pervasive.

C. A reasonable person would find repeated, sex-based taunting abusive.

To prevail on a hostile environment claim, the plaintiff must also show the work environment was subjectively and objectively hostile. *Harris v. Forklift Systems,* 510 U.S. 17, 21-22 (1993). The burden of demonstrating subjectivity is not high. *Hall*, 713 F.3d at 332. Indeed, Ford does "not dispute that the complained of conduct was subjectively offensive to Hoekstra...." Doc. 59 at 5, n. 5. Nor could it. Hoekstra experienced adverse health consequences from the harassment, including a severe panic attack in 2002 that required hospitalization. Doc. 55-1 at 53. She now suffers from anxiety and panic, lamenting, "I'm actually scared to go to work." *Id.* at 22.

An objectively hostile work environment is one that a reasonable person would find hostile or abusive. *Adusumilli v. City of Chicago,* 164 F.3d 353, 361 (7th Cir. 1998). In evaluating the objective standard, courts consider the frequency of the conduct, its severity, whether it is physically threatening or humiliating, and whether it interferes with an employee's work performance. *Harris,* 510 U.S. at 23.

Humiliating inquiries to Hoekstra about AIDS, yeast infections, lingerie, and bra size, having her body inspected, and being felt in intimate areas demonstrate an objectively hostile environment. Doc. 55-1 at 66, 148, 177, 180. A reasonable person would find unwanted groping and ribald

remarks by at least 20 different individuals hostile. In fact, the numerous bouts of harassment in which Hoekstra was subjected are the height of hostility. At a minimum, there is a question of material fact about whether this atmosphere was objectively offensive, precluding summary judgment.

D. Hoekstra's female gender was the cause of her harassment.

Ford did not challenge this element at summary judgment. In any event, as set forth above, the evidence is clear that the touches and taunts were directed at Hoekstra because she is a woman. Employees spewed comments such as "shake that ass," "nice boobs," "big tits," "porn hair," and "sexy." Doc. 55-1 at 180, 185-88. They also asked Hoekstra about her lingerie and bra size. *Id*. at 180. As set forth above, the comments, along with the touching, occurred because Hoekstra is a woman.

E. Ford downplays the Plant's hyper-sexualized and physically intimidating environment.

At summary judgment, Ford argued that the grabbing, pulling, and pinning of Hoekstra's body was not actionable because it did not happen enough. In Ford's words: "Hoekstra claims that she received only a handful of unwelcome comments each year.... Her physical contact allegations are similarly sporadic." Doc. 59 at 6. Ford then listed eleven incidents of touching as if they were nothing more than an occupational hazard of the Chicago Stamping Plant. *Id*. Ford (and the district court) minimize Hoekstra's ordeal

and the anxiety, stress, and medical treatment it spawned. But their refusal to consider her experience as a whole leaves their reasoning fatally flawed.

Ford also defined for the district court what it believes is offensive conduct in the workplace: "solicited for sex, shown or exposed to any off-color material, kissed...." Doc. 59 at 7. As long as employees avoid these actions, Ford is in the clear. Thankfully, this is not the law. Ford's ultimate dismissal of the conduct as "boorish" reflects its indifference to sexual harassment in the workplace and disregard for the plight of its victims and their physical and emotional integrity. *See* Doc. 59 at 3.

III. Employer Liability Exists When Hoekstra Objected Through Multiple Channels and The Harassment Persisted.

A. The evidence was viewed in Ford's favor.

The district court granted summary judgment on the element of employer liability. Appendix at A6-A13. The court reasoned that most of the harassment "was not brought to light by Hoekstra until many years later and on the various occasions when she did accuse others of misconduct, Ford took steps to investigate the accusations and correct any potential problem." Appendix at A11. The court also found Hoekstra "failed to take advantage of any preventive or corrective opportunities at Ford in regard to alleged conduct by supervisors." *Id.* at A13. That reasoning misapplies the law and stems from a narrow reading of the record. Reviewed *de novo*, the Court should reverse.

B. Ford is strictly liable for the harassment by supervisors Horton, Vega, Wills, Burr, and Suyak.

An employer is strictly liable if a supervisor harasses the employee and the employer cannot establish the affirmative defense of *Burlington Industries, Inc. v. Ellerth,* 524 U.S. 742 (1988). *Lambert v. Peri*, 723 F.3d 863, 866 (7th Cir. 2013). That defense has two elements: (a) the employer exercised reasonable care to prevent and promptly correct the harassment, and (b) the plaintiff failed to use the employer's preventive or corrective measures. *Passananti v. Cook Cnty.,* 689 F.3d 655, 670 (7th Cir. 2012).

The emphasis of Title VII in this context is not on redress but preventing future harm. *Lapka v. Chertoff*, 517 F.3d 974, 984 (7th Cir. 2008). In this regard, Ford failed miserably.

1. Ford's anti-harassment policy is a paper tiger.

The district court found Ford "promulgated an anti-harassment policy and [took] reasonable steps to prevent unlawful harassment in the workplace." Appendix at A12. This conclusion is plagued by the court's failure to read the evidence in a light favorable to Hoekstra. Moreover, the existence of a sexual harassment policy is not a cure-all. *Gentry v. Export Packaging Co.*, 238 F.3d 842, 847-48 (7th Cir. 2001). The policy must provide a meaningful process whereby employees can express their concerns. *Id.* The

policy must also be effective in theory and in practice. *EEOC v. Management Hospitality of Racine, Inc.*, 666 F.3d at 435.

Analogous to the instant facts is *EEOC v. Management Hospitality*. There, multiple supervisors engaged in sexual harassment and management failed to investigate some harassment complaints. 666 F.3d at 434-35. The Court held that a rational jury "could have found that none of the managers . . . took action under the policy that could be termed 'corrective' or 'effective.'" *Id*. at 435. The Court thus rejected the employer's reliance on its harassment policy. *Id*. *See also Loughman v. Malnati Org., Inc.,* 395 F.3d 404, 407 (7th Cir. 2005) ("consistent stream" of harassment suggested policy "was actually not very effective at all.").

Like *Management Hospitality* and *Loughman*, the futility of Ford's policy and its implementation is evident. Ford did not exercise reasonable care to stop the harassment because it never stopped. Nor did Ford discipline anyone. Doc. 55-2 at 113-14. This is not surprising given the remarkably relaxed view of workplace touching held by Rebecca Taylor, who adjudicated the harassment claims for Ford. *See* Doc. 55-2 at 100-01. Moreover, Ford employees are rarely trained on harassment. Doc. 62, Ex. 19 at Bates No. 4706. Of the four Plant workers Hoekstra deposed, three (Cooper, Vega, and Horton) did not recall any harassment classes or have records of training since 2001. Doc. 55 at ¶ 122; Doc. 55-2 at 194; Doc. 55-3 at 137-38. The other

employee, Al Wills, last had training in 2004 when he was in the Michigan plant. Doc. 55 at ¶ 122. Hoekstra's last training was in the mid-1990s. Doc. 55-1 at 193. Finally, employees saw no harassment postings. Doc. 55 at ¶ 122.

While Ford will emphasize its harassment policy, the record demonstrates it was ineffective in practice. Based on the "continuous stream" of harassment, Taylor's archaic approach to sex harassment, and the class-wide violations, a jury could find Ford did not act in a corrective fashion. *Management Hospitality* and *Loughman* thus warrant reversal.

2. Hoekstra used Ford's corrective measures.

Ford does not dispute Hoekstra reported eight individuals to Labor Relations: Carl Horton, Al Wills, Eugene White, Perry Haynes, Don Cooper, Jesse Landingham, Mark Bowman, and Ray Vega. Hoekstra also reported Jerry Summit and the security guard to her union rep Charlie Evans. While Ford contends Hoekstra did not report Tyrone Lloyd, Jim Guth, Andy Vargavich, or the security guard, Hoekstra asserts she did. Doc. 55 at ¶¶ 25, 35, 38. Viewing the evidence in Hoekstra's favor, these four men were reported. As such, Hoekstra complained about 13 different individuals. The district court's finding that Hoekstra failed to use Ford's corrective measures is thus backward; Ford's corrective measures failed Hoekstra.

Additionally, notice may be presumed where the workplace is rife with harassment. *Wilson v. Chrysler Corp.*, 172 F.3d 500, 509 (7th Cir. 1999).

Wilson involved rampant sexual harassment at a car plant which "took place on the floor of the assembly plant which, by design, is a peculiarly communal employment forum." *Id*. "The cumulative effect of these disparate acts defies Chrysler's contention that, at worst, [plaintiff] was the victim of a series of isolated incidents." *Id*. *Wilson* mirrors the multifaceted nature of Hoekstra's harassment and the vast array of harassers. And like *Wilson*, the harassment at Ford is an "institutional norm." *See id*. at 511. The EEOC found class-wide violations of sexual harassment at the Chicago Stamping Plant. Appendix at A17-A18. Ford thus cannot claim ignorance, especially when Hoekstra complained *ad nauseam*.

3. Hoekstra's failure to report every incident is not dispositive because she feared retaliation.

As to Ricky Miracle, Jay Soucci, Brian Ripple, Michael Scalzetti, Rodney Zea, and other unknown individuals, Hoekstra did not report them because she feared additional retaliation and harassment. Doc. 55-1 at 120, 146. The district court rejected Hoekstra's retaliation concerns because "if such an explanation were sufficient there would never be any reporting obligation on an employee." Appendix at A7. Case law says otherwise.

A reasonable fear of retaliation can excuse the failure to use corrective measures. *Johnson v. West*, 218 F.3d 725, 732 (7th Cir. 2000). The *Johnson* plaintiff's delay of almost a year to report harassment "may have stemmed

from a supervisor's intimidation." *Id*. The Court found this reaction reasonable because a jury could find the plaintiff was under severe emotional stress due to the harassment. *Id.* The Court thus reversed a bench trial finding that the employer was not liable. *Id*.

Additionally, the plaintiff in *EEOC v. Management Hospitality* "did not feel comfortable" reporting a supervisor's harassment based on management's prior failure to address a complaint. 666 F.3d at 437. The Court thus rejected the claim that the plaintiff failed to utilize corrective measures. *Id*. *See also Simon v. City of Naperville*, 88 F. Supp. 2d 872, 877 (N.D. Ill. 2000) (plaintiff's failure to file complaint was not unreasonable based on her retaliation fears); *Maple v. Publications Int'l Ltd.,* No. 99 C 6936, 2000 U.S. Dist. LEXIS 11485, *18 (N.D. Ill. July 20, 2000) (reasonableness of plaintiff's fear and delay in reporting harassment were issues of fact precluding summary judgment).

Setting aside the 13 men Hoekstra reported, Hoekstra's fear and corresponding failure to use corrective measures for every incident parallels the plaintiffs in *Johnson, Management Hospitality*, *Simon*, and *Maple*. And like *Johnson*, Hoekstra was under severe stress that required medical treatment. Doc. 55-1 at 22, 53. With the lack of support from Taylor, Hoekstra's actions were entirely reasonable.

Nor was Hoekstra's fear of retaliation misplaced. First, Labor Relations dismissed Hoekstra's concerns and told her to return to work after she

objected to Wayne Rosentrader's harassment. Doc. 55-4 at 48, ¶ 2. Second, after reporting Carl Horton, she was told her complaint lacked merit and was assigned to Horton, who then retaliated against her. Doc. 55-1 at 38, 42-46, 162. Third, when she reported Al Wills, union rep Charlie Evans asked Hoekstra if she had a "vendetta" against Ford. Doc. 55-1 at 71. Fourth, after Labor Relations spoke to Jesse Landingham, he saw Hoekstra and ordered her to "stay over there." Doc. 55-1 at 146-47. Fifth, Ray Vega texted Hoekstra, "Oh im pretty sure u will accomplish a lot," and after receiving no reply from Hoekstra, Vega texted "Be that way." Doc. 55-1 at 117-19; Doc. 48-2 at 116. This tension justifies Hoekstra's timidity.

Hoekstra also believed Labor Relations was ineffective in assisting her. This concern was well founded as Labor Relations failed to thoroughly investigate and never disciplined any offender. Doc. 55-2 at 113-14. The gatekeeper of Hoekstra's complaints was Taylor, who could not definitively denounce a punch in the leg or pat on the buttocks. Doc. 55-2 at 100-01. And the counseling Ford will emphasize was toothless—it was not discipline. *See* Doc. 55-2 at 113-14. Horton, Vega, and Wills harassed or retaliated against Hoekstra after counseling. Doc. 55 at ¶¶ 15-19, 50, 111-13. In fact, Vega felt up against Hoekstra after she had reported him. Doc. 55-1 at 109-11. Thus, despite Taylor's counseling, Hoekstra is still "scared to go to work." *Id*. at 22.

C. Ford is liable for the coworker harassment because its response was anemic.

When a coworker harasses, the employer is liable if it is negligent in discovering or remedying the harassment. *Lambert,* 723 F.3d at 866. Ford is liable because the harassment continued and no one was disciplined.

1. A reasonable response to harassment is one that ends it.

An employer is liable if its response to harassment is inadequate. *Milligan v. Bd. of Trs. of S. Ill. Univ.,* 686 F.3d 378, 383 (7th Cir. 2012). Ford had to respond in a manner reasonably likely to end the harassment. *See Sutherland v. Wal-Mart Stores, Inc.,* 632 F.3d 990, 995 (7th Cir. 2011). What is reasonable depends on the circumstances, including the gravity of the harassment. *McKenzie v. Ill. Dep't of Transp.,* 92 F.3d 473, 480 (7th Cir. 1996). Finally, the efficacy of an employer's response establishes whether the action was likely to stop the harassment. *Cerros v. Steel Techs., Inc.,* 398 F.3d 944, 954 (7th Cir. 2005).

A reasonable response to harassment occurred in *Muhammad v. Caterpillar, Inc.*, 767 F.3d 694 (7th Cir. 2014). After the employer addressed coworkers' offensive comments, only one coworker made another remark. *Id.* at 698. As for the offensive graffiti, the employer responded immediately each time the plaintiff reported it, and the problem soon stopped. *Id.*

An unreasonable response to harassment occurred in *Orton-Bell*, 759 F.3d 768. The plaintiff complained to her superintendent about offensive comments, in accordance with company policy, but nothing changed. 759 F.3d at 776. This was sufficient for a jury to find employer liability and the Court reversed summary judgment for the employer. *Id*.

2. Ford's response was unlikely to (and did not) end the harassment.

Hoekstra's experience parallels *Orton-Bell*, not *Muhammad*. Hoekstra complained numerous times to Labor Relations, to no avail. Recognizing the futility of Labor Relations, Hoekstra sought an alternative outlet, union rep Charlie Evans. And while the names of the harassers varied, the target—Hoekstra—remained the same. Unlike *Muhammad*, the problems persisted and the touching continued. The following six points accentuate what is otherwise obvious: Ford did not prevent future harm.

First, Labor Relations did not thoroughly investigate Al Wills, who grabbed Hoekstra's breast, as Taylor never asked Wills if he grabbed her breast. Doc. 55-2 at 18. Further, Taylor did ask Wills if ever tapped Hoekstra or rubbed her back, and Wills said he did not recall. Doc. 55-2 at 19. Wills was initially suspended six days but then reinstated with full back pay—in essence, a paid vacation. Doc. 55-2 at 19-21.

Second, the investigation of Eugene White, who pressed himself hard against Hoekstra's left breast and body, was also perfunctory. White, who admitted embracing Hoekstra, was merely counseled. Doc. 48-2 at 50.

Third, Ford classified Hoekstra's complaint about Perry Haynes threatening her with a scooter as a joke, and thus scolded him for unsafe driving. Doc. 55 at ¶ 107; Doc. 55-2 at 23-24.

Fourth, Don Cooper never denied Hoekstra's allegations, yet Taylor found she could not verify Hoekstra's complaint. Doc. 55 at ¶ 117. Concluding the investigation, Taylor merely "asked [Cooper] not to touch her in future." Doc. 55-2 at 88-90.

Fifth, the investigation of Jesse Landingham was perfunctory. Even though Hoekstra mentioned at least one possible witness, Taylor interviewed no one. Doc. 55-2 at 97-98. Taylor could not verify Hoekstra's complaint and "asked [Landingham] not to touch her in future." Doc. 55-2 at 88-90.

Sixth, while supervisor Ray Vega admitted touching Hoekstra, he was not disciplined. Doc. 55-3 at 66. He was also not questioned about two prior incidents of pulling Hoekstra's hair. Doc. 62, Ex. 12 at Bates No. 3907. And despite instructions not to contact Hoekstra, Vega texted her while she was on medical leave. Doc. 48-2 at 116.

Given the continuous harassment, a reasonable response would have been to evaluate why repeated counseling was necessary in the first place.

Common sense would also suggest the Chicago Stamping Plant as a whole needed a refresher, or introduction, on sexual harassment in the workplace. Ford instead took a reactive approach, forcing Hoekstra and the other female workers to go through a gauntlet of groping and gratuitous remarks.

D. Summation.

Hoekstra used Ford's corrective measures in reporting 13 coworkers and supervisors. Ford did not exercise reasonable care to prevent harassment. Finally, Hoekstra's occasional self-censoring stemmed from retaliation concerns, and whether an employee fails to avail herself of corrective measures is a jury question. *See Hardy v. Univ. of Ill. at Chicago,* 328 F.3d 361, 365-66 (7th Cir. 2003). Reviewed *de novo*, the Court should reverse.

IV. Retaliation Exists Because Hoekstra Became a Pariah After Complaining About Harassment.

A. Hoekstra experienced retaliation through a hostile work environment.

Title VII prohibits an employer from retaliating against an employee for conduct protected under the Act. 42 U.S.C. § 2000e-3(a). For a direct case of retaliation, Hoekstra must show: (1) statutorily protected activity; (2) an adverse action taken by Ford; and (3) a causal connection between the two. *See Malin,* 762 F.3d at 558. Under the indirect method, Hoekstra must show she: (1) engaged in statutorily protected activity; (2) performed her job according to Ford's legitimate expectations; (3) suffered an adverse

employment action; and (4) was treated less favorably than similarly situated employees who did not engage in protected activity. *See Nichols v. S. Ill. Univ.*, 510 F.3d 772, 785 (7th Cir. 2007). Hoekstra engaged in statutorily protected activity, and there is no evidence her job performance was poor. In fact, Ford only challenges the adverse employment action. Doc. 59 at 16-20.

An adverse employment action includes unbearable changes in job conditions, such as a hostile work environment. *Barton v. Zimmer, Inc.,* 662 F.3d 448, 453–54 (7th Cir. 2011). Adverse employment actions can thus "extend beyond readily quantifiable losses." *O'Neal v. City of Chicago,* 392 F.3d 909, 911 (7th Cir. 2004). Additionally, creating a hostile work environment can be retaliation. *Knox v. State of Ind.*, 93 F.3d 1327, 1334 (7th Cir. 1996). "No one would question the retaliatory effect of many actions that put the complainant in a more unfriendly working environment." *Smith v. Northeastern Ill. Univ.,* 388 F.3d 559, 567 (7th Cir. 2004).

B. Retaliation need not immediately follow protected activity.

The passage of time is not conclusive proof against retaliation. *Malin*, 762 F.3d at 559. Thus, no bright-line timing rule exists for whether a retaliation claim should go to the jury. *Oest v. Illinois Dep't of Corrections*, 240 F.3d 605, 613 (7th Cir. 2001). In *Malin,* the Court considered whether the plaintiff presented evidence of a causal connection between her 2003 complaint about sexual harassment and her 2006 demotion. 762 F.3d at 558.

Reversing summary judgment, the Court held the three-year gap did not "conclusively bar an inference of retaliation." *Id*. at 560.

While the timing between some of Hoekstra's complaints to Labor Relations and retaliation was not immediate, other instances of retaliation followed complaints. For example, Brian Ripple knuckle-punched Hoekstra in the arm after a conversation about Carl Horton's harassment. Doc. 55-1 at 49-50. Several days after Hoekstra reported Al Wills, Perry Haynes swerved at her while driving an electric powered scooter. Doc. 55-1 at 92. When Hoekstra reported Wills, she was asked if she had a "vendetta" against Ford. Doc. 55-1 at 71. While the district court avoided these facts, Hoekstra established the causal connection between reporting individuals and hostility.

C. The district court's narrow lens.

The district court rejected any connection between some workers intimidating Hoekstra and other workers being accused of harassment by her. The court plucked one incident from the lengthy record and concluded: "Hoekstra has pointed to no evidence tying Haynes to others associated with alleged harassment or retaliation." Doc. 64 at 14. The court ignored numerous examples and erroneously analyzed the Haynes incident in isolation

The evidence excluded from the court's analysis is damning. Hoekstra was denied a promotion three times. Doc. 55-1 at 199-202, 226. Carl Horton retaliated against her by having her disciplined twice. Doc. 55 at ¶¶ 17-19.

Brian Ripple, Michael Scalzetti, and other harassers retaliated against Hoekstra for speaking out. Doc. 55-1 at 49-51. Hoekstra's workstation was tampered with when the extension cord for her fan was hidden. Doc. 55-1 at 92. After Hoekstra reported Al Wills and Ray Vega, they continued bothering Hoekstra. Doc. 55 at ¶¶ 50, 66-67. Charlie Evans asked Hoekstra if she had a "vendetta" against Ford. Doc. 55-1 at 71. After Labor Relations spoke to Jesse Landingham, he saw Hoekstra and told her to "stay over there." Doc. 55-1 at 146-47. Hoekstra thus experienced more difficult work conditions because she objected to harassment. *Id*. at 228-33. Indeed, the EEOC determined there was reasonable cause to find Ford retaliated against Hoekstra "and a class of employees for engaging in protected activity...." Appendix at A17-A18.

The district court ignored a pattern of evidence a jury could use to infer retaliatory intent. *See Oest*, 240 F.3d at 613 (even if a pattern of acts cannot state a discrimination claim, "they can constitute relevant evidence of discrimination" concerning adverse employment actions). Reviewed *de novo*, the district court's neglect of critical evidence warrants reversal.

Finally, the district court ignored that Hoekstra's complaints about harassment were "common knowledge" in the Chicago Stamping Plant. *See* Doc. 55-3 at 10-11, 122-23. In fact, all the accused harassers knew each other. *Id*. at 10-11; 148-49. Don Cooper said Hoekstra was "accusing people . . . for years" and heard coworkers discussing her complaints to Labor Relations. *Id*.

at 143-44. The evidence thus establishes Hoekstra's harassers knew one another and discussed Hoekstra's complaints. A reasonable jury could infer that employees retaliated against Hoekstra for accusing fellow line workers of harassment. Hoekstra has thus established an issue of fact whether the hostile work environment was retaliation for her harassment complaints.

CONCLUSION

Repeated, unwanted physical contact falls on the severe side of the sexual harassment spectrum. Hoekstra repeatedly complained and Ford did nothing. Reviewed *de novo* and setting the evidence in a light most favorable to Hoekstra, reversal is proper. Hoekstra further requests the Court apply Circuit Rule 36 on remand.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH F.R.A.P. RULE 32(a)(7)

The undersigned, counsel of record for the Appellant, furnishes the following in compliance with F.R.A.P. Rule 32(a)(7):

I hereby certify that this brief conforms to the provisions of F.R.A.P. Rule 32(a)(7) for a brief produced with a monospaced font. The length of this brief is 8,453 words according to the Microsoft word count function.

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CIRCUIT RULE 31(e)(1) CERTIFICATION

I, Christopher Keleher, hereby certify that fifteen paper copies of the Appellant's Brief and Required Short Appendix were sent within 7 days of filing on the Court's ECF system via hand delivery to:

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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the Appellant's Brief and Required Short Appendix upon the party listed herein, by February 3, 2016, to:

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CIRCUIT RULE 30(d) STATEMENT

The undersigned hereby certifies that I have filed electronically, pursuant to Circuit Rule 30(d), versions of the brief that are available in non-scanned pdf format.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HEATHER HOEKSTRA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 13 C 2814**
	)	
FORD MOTOR COMPANY,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

SAMUEL DER-YEGHIAYAN, District Judge

This matter is before the court on Defendant Ford Motor Company's (Ford) motion for summary judgment. For the reasons stated below, the motion for summary judgment is granted in part, and the remaining state law claim is dismissed without prejudice.

BACKGROUND

Plaintiff Heather Hoekstra (Hoekstra) allegedly began working for Ford in 1996 at Ford's Chicago Stamping Plant (Plant) on the production line. In 2004, Hoekstra was promoted to an inspector position, which she currently holds. Hoekstra claims that starting in the late 1990s she was sexually harassed at work, and that after complaining to management about the alleged harassment, she suffered

retaliation. According to Hoekstra, there was not one continuous perpetrator or group of perpetrators that engaged in such misconduct during her years of employment. Instead, according to Hoekstra, the accused persons harassed her or retaliated against her only for a limited period of time or in some cases in only one isolated instance. Those accused of harassment and retaliation include a variety of persons with no apparent connections, including co-workers, supervisors, security guards, and other unknown individuals at the Plant. Over the course of a decade and a half Hoekstra claims to have suffered discrimination, harassment, and retaliation, by more than 15 co-workers, six supervisors, and various other unknown, unidentified, and random male employees. During that time, Hoekstra allegedly made numerous complaints to management about her perceived treatment and took various medical leaves for her alleged anxiety. Hoekstra also attributes certain isolated events during the course of the years of her employment, such as finding a power cord missing one day, and a scooter swerving near her, to an alleged hidden conspiracy against her.

In 2013, Hoekstra brought the instant action and includes in her amended complaint a claim alleging sex discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII) (Count I), a Title VII hostile work environment claim (Count I), a Title VII retaliation claim (Count II), and an Illinois Whistleblower Act, 740 ILCS 174/1 *et seq.* claim (Count III). Ford moves for summary judgment on all claims.

LEGAL STANDARD

Summary judgment is appropriate when the record, viewed in the light most favorable to the non-moving party, reveals that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Smith v. Hope School*, 560 F.3d 694, 699 (7th Cir. 2009). A "genuine issue" in the context of a motion for summary judgment is not simply a "metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, a genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Insolia v. Phillip Morris, Inc.*, 216 F.3d 596, 599 (7th Cir. 2000). In ruling on a motion for summary judgment, the court must consider the record as a whole, in a light most favorable to the non-moving party, and draw all reasonable inferences in favor of the non-moving party. *Anderson*, 477 U.S. at 255; *Bay v. Cassens Transport Co.*, 212 F.3d 969, 972 (7th Cir. 2000).

DISCUSSION

I. Sex Discrimination Claim

Ford moves for summary judgment on the Title VII disparate treatment sex discrimination claim. (SJ. Mem. 5 n.2). Hoekstra includes allegations in her complaint indicating that she is bringing a sex discrimination disparate treatment claim along with her hostile work environment claim. Hoekstra alleges in Count I

that Ford "discriminated against [Hoekstra] based upon her gender. . . ." (A. Compl. Par. 2). Hoekstra further alleges that "Ford discriminated against Hoekstra based on her sex, female, by subjecting her to different terms and conditions of employment *and* to a hostile work environment. . . ." (A. Compl. 53)(emphasis added). In response to Ford's motion for summary judgment, however, Hoekstra offers no arguments as to establishing the requirements under the direct method of proof or the requirements under the indirect method of proof. *See Nichols v. Michigan City Plant Planning Dep't*, 755 F.3d 594, 604 (7th Cir. 2014)(explaining direct and indirect methods of proof). Instead, Hoekstra has focused on her hostile work environment claim in Count I despite the fact that Ford has moved for summary judgment on all claims. (Mem. SJ 5 n.2, 22). To the extent that Hoekstra has assumed that the hostile work environment claim is one and the same under the law as the sex discrimination disparate treatment claim, or that she can bring a hybrid of the two, she is mistaken. There are entirely distinct criteria for the two types of claims. *See Orton-Bell v. Indiana*, 759 F.3d 768, 773-78 (7th Cir. 2014)(separately addressing hostile work environment claim and sex discrimination claim). Hoekstra has not clarified whether her failure to argue in support of her sex discrimination disparate treatment claim expresses her intent to abandon such claim and voluntarily dismiss such claim. Therefore, to the extent that Hoekstra is still seeking to pursue a Title VII sex discrimination disparate treatment claim against Ford, Ford's motion for summary judgment on that claim is granted.

II. Hostile Work Environment Claim

Ford moves for summary judgment on the hostile work environment claim. For a Title VII hostile work environment claim, a plaintiff must show: (1) that "her work environment was both objectively and subjectively offensive," (2) that "the harassment was based on her" protected characteristic, (3) that "the conduct was either severe or pervasive," and (4) that "there is a basis for employer liability." *Vance v. Ball State Univ.*, 646 F.3d 461, 470 (7th Cir. 2011). Hoekstra alleges a broad variety of facts detailing alleged harassment and retaliation that range from physical contact such as unwanted hugs, oral statements of a sexual nature, and the use of sarcasm, which Hoekstra also considered a form of sexual harassment. (H. Dep. 191). Ford questions the veracity of Hoekstra's many allegations, contending that Hoekstra consistently lacked any corroboration for her accusations and that there were investigations by Ford that indicated that Hoekstra's versions of the facts were not accurate. (Reply 12-13). Ford also indicates that to the extent that there was evidence indicating any potential harassment or retaliation, such employees were disciplined. The court need not resolve whether Hoekstra is telling the truth about her many years of alleged mistreatment. Ford argues that even if for the purposes of the instant motion, the court accepted Hoekstra's allegations as true, she cannot succeed on her hostile work environment claim since there is not sufficient evidence to show that Ford can be held liable for any harassment.

A. Co-Workers

Ford argues that there is not sufficient evidence to establish employer liability for any of the alleged harassment by co-workers. In order for an employer to be liable for harassment by co-workers, a plaintiff must establish that the employer was "negligent either in discovering or remedying the harassment." *Vance*, 646 F.3d at 471 (stating that "[o]nce aware of workplace harassment, the employer can avoid liability for its employees' harassment if it takes prompt and appropriate corrective action reasonably likely to prevent the harassment from recurring"). Ford now accuses the following co-workers of harassment during her years of working for Ford: Ricky Miracle (Miracle) (2002), Brian Ripple (Ripple) (2003), Michael Scalzetti (Scalzetti) (2003), Jay Soucci (Soucci) (2003), Jim Guth (Guth) (2008-09), Rodney Zea (Zea) (2009), Andy Vargavich (Vargavich) (2011), Al Wills (Wills) (2011), Eugene White (White) (2011), Perry Haynes (Haynes) (2011), Mark Bowman (Bowman) (2012), Tyrone Lloyd (Lloyd) (2012), Jerry Summit (Summit) (2013), Don Cooper (Cooper)(2012-13), and Jesse Landingham (Landingham) (2013). Hoekstra also accuses an unidentified security guard of harassment in 2004, unknown and unidentified individuals of harassment in the "mid-2000's," and other unknown individuals during other time periods. (R SF Par. 28, 81). Hoekstra testified at her deposition that she recalls "occasional comments from unknown, random employees in the hallway" that she considered harassment. (H. Dep. 27).

1. Unreported Conduct

In regard to Miracle, Ripple, Soucci, Scalzetti, and Zea, it is undisputed that Hoekstra failed to report the alleged harassment to Ford. (R SF Par. 23, 24, 36). Ford cannot be considered negligent in discovering any such alleged harassment, when it is first informed of such harassment in a lawsuit filed over a decade after the alleged conduct occurred. Hoekstra also contends that she never reported the alleged harassment because she feared retaliation. However, if such an explanation were sufficient, there would never be any reporting obligation on an employee. The court also notes that Hoekstra's explanation is not consistent with the undisputed facts that show that Hoekstra frequently complained to management about workplace issues.

In regard to Guth, Hoekstra indicated at her deposition that she did not report his alleged harassment to Ford. (H. Dep. 189). Ford has also shown that Hoekstra in her response to interrogatories indicated during discovery that she never reported Guth's alleged conduct to Ford. (Reply R SF Par. 35). In regard to Vargavich, it is undisputed that after the alleged harassment, Hoekstra never reported it to Labor Relations. (R SF Par. 38). The record merely reflects that Hoekstra later mentioned the alleged conduct when being interviewed as a potential witness in another investigation. (R SF Par. 38).

In regard to the various unknown individuals accused of misconduct, Hoekstra also admits that she never reported to Ford the conduct of the unknown individuals. (R SF Par. 28, 81). Nor could Ford be negligent in remedying alleged harassment when Hoekstra was not even able to provide names of those she accused. As to the

unknown security guard, Hoekstra claims to have told her union representative at some point, but she has not shown that she informed Labor Relations or any management at Ford about the issue or that steps were not taken to address the complaint. (R SF Par. 25).

2. Wills

It is undisputed that after Hoekstra accused Wills of harassment, he was interviewed by Rebecca Taylor (Taylor) from Labor Relations. (R SF Par. 45). It is further undisputed that Wills was suspended pending the outcome of the investigation, that during the investigation at least eight witnesses were interviewed, and that none of the witnesses corroborated Hoekstra's claim that Wills touched her in the particular manner she claimed. (R SF Par. 45-48).

3. White

It is undisputed that after Hoekstra accused White of harassment, Labor Relations conducted an investigation, and no witness corroborated Hoekstra's version of events. (R SF Par. 54-55). It is further undisputed that even though there was no evidence to corroborate Hoekstra's accusations, White received a verbal coaching and counseling. (R SF Par. 55).

4. Haynes

Hoekstra accused Haynes of swerving an electric scooter near Hoekstra. (R SF Par. 56-57). Hoekstra indicated that she believes Haynes' action to be a part of the hostile work environment and may be part of a hidden conspiracy to retaliate against her. (H. Dep. 92-97). It is undisputed that there were no allegations that Haynes ever engaged in any alleged misconduct other than the swerving scooter. (R SF Par. 56-59). It is further undisputed that Hoekstra has no knowledge that Haynes had any connection with individuals whom she had accused of harassment. (R SF Par. 58). The undisputed facts further show that after Hoekstra complained about Haynes, he was counseled as to Ford's anti-harassment policy and instructed to drive more carefully. (R SF Par. 59); (Tay. Dep. 82-83).

5. Bowman

It is undisputed that when Hoekstra accused Bowman of harassment, she did not know his identity. (R SF Par. 69)). It is further undisputed that Labor Relations investigated the report and identified Bowman as the alleged harasser. (R SF Par. 70). It is also undisputed that during the investigation Bowman indicated that the alleged statements were not even directed at Hoekstra and that she incorrectly assumed he had been speaking to her. (R SF Par. 70). The undisputed facts show that Taylor in Labor Relations investigated the accusations and found that there was no evidence to verify Hoekstra's version of events. (R SF Par. 70). The undisputed facts further show that Bowman was coached and counseled. (R SF Par. 70).

6. Lloyd

Hoekstra accuses Lloyd of making a punching motion toward her on one occasion in 2012. Hoekstra does not explain the context of the alleged motion and was not sure if he was joking around or not. (H. Dep. 132-33). Hoekstra indicates that she believes the alleged conduct to be a part of her hostile work environment. The undisputed facts indicate that Hoekstra reported Lloyd to Labor Relations, and there is no showing that upon receiving the complaint Ford was negligent in addressing the situation.

7. Summit

Hoekstra accused Summit of doing a "side butt bump" and calling her "trouble" on one occasion in 2012 or 2013. (R SF Par. 75). It is undisputed that although at the time Hoekstra thought Summit meant it as a joke, Hoekstra later decided it was sexual harassment and reported Summit. (R SF Par. 75). It is undisputed that Hoekstra never reported Summit to Labor Relations and that the union representative whom she did inform spoke to Summit about the incident. (R SF Par. 76).

8. Cooper

It is undisputed that after Hoekstra accused Cooper of harassment, Labor Relations conducted an investigation, and no witness corroborated Hoekstra's version of events. (R SF Par. 77-78). It is further undisputed that even though there

was no evidence to corroborate Hoekstra's accusations, Cooper received a verbal coaching and counseling. (R SF Par. 78). Hoekstra admits that afterwards there was no other misconduct by Cooper other than one time when he allegedly stared at her from a distance away that she believed to be more harassing behavior. (R SF Par. 78).

9. Landingham

It is undisputed that after Hoekstra accused Landingham of harassment, Labor Relations conducted an investigation, and no witness corroborated Hoekstra's version of events. (R SF Par. 79). It is further undisputed that even though there was no evidence to corroborate Hoekstra's accusations, Landingham received a verbal coaching and counseling. (R SF Par. 79).

Thus, based on the above, in regard to alleged harassment by co-workers, the undisputed facts show that Ford was not negligent either in discovering or remedying the alleged harassment. Much of the alleged harassment was not brought to light by Hoekstra until many years later and on the various occasions when she did accuse others of misconduct, Ford took steps to investigate the accusations and correct any potential problem.

B. Supervisors

Ford argues that there is not sufficient evidence to establish employer liability for any of the alleged harassment by supervisors. An employer is generally strictly

liable for harassment made by supervisors of a plaintiff. *Vance*, 646 F.3d at 469-70. However, under the *Ellerth/Faragher* affirmative defense an employer can avoid liability for the conduct of a supervisor if no tangible employment action was taken against the plaintiff by the supervisor and the employer can establish: (1) that "the employer exercised reasonable care to prevent and correct promptly any . . . harassing behavior," and (2) that "the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise." *Cerros v. Steel Technologies, Inc.*, 398 F.3d 944, 951-52 (7th Cir. 2005). Ford now accuses the following supervisors of harassment during her years of working for Ford: Wayne Rosentrater (Rosentrater) (late 1990's), Carl Horton (Horton) (2001-03), Ray Vega (Vega) (2003, 2008, 2012), Bernie Burr (Burr) (2007-09), Eric Suyak (Suyak) (2010), and Jeff Gossage (Gossage) (2013). Hoekstra has not pointed to sufficient evidence to show that any of such supervisors took a tangible employment action against Hoekstra. The undisputed facts show that Ford has promulgated an anti-harassment policy and taken reasonable steps to prevent unlawful harassment in the workplace.

In regard to the allegations made against Rosentrater and Horton, the alleged misconduct supposedly occurred in 2003 and earlier. Such conduct, which occurred prior to a gap of several years in alleged harassment, is outside the limitations period for Title VII claims and cannot be introduced under the continuing violation theory. *Turner v. The Saloon, Ltd.*, 595 F.3d 679, 683-87 (7th Cir. 2010). In regard to Vega, the undisputed facts show that Hoekstra did not inform Ford of the alleged conduct

by Vega in 2002 and 2008 until years later in 2012. (R SF Par. 30-31). Nor has Hoekstra pointed to sufficient evidence to show that Vega's alleged conduct in 2012 was sufficient to be actionable conduct. In regard to the accusations against Burr, Suyak, it is undisputed that Hoekstra never informed Ford of their alleged misconduct. (R SF Par. 32, 37). In regard to the accusations against Gossage, who allegedly called Hoekstra "babe" and "kiddo," it is undisputed that Hoekstra never reported the alleged conduct to Ford. (R SF Par. 80). Thus, the undisputed evidence shows that Hoekstra failed to take advantage of any preventive or corrective opportunities at Ford in regard to alleged conduct by supervisors. It is also apparent, based on the many complaints made by Hoekstra to Labor Relations, that she was familiar with how to pursue a sexual harassment complaint. Therefore, Ford's motion for summary judgment on the hostile work environment claim is granted.

III. Retaliation Claim

Ford moves for summary judgment on the Title VII retaliation claim. A plaintiff bringing a Title VII retaliation claim seeking to defeat a defendant's motion for summary judgment can proceed under the direct or indirect method of proof. *Moultrie v. Penn Aluminum Intern., LLC,* 766 F.3d 747, 754-55 (7th Cir. 2014). A plaintiff who is bringing a Title VII retaliation claims can defeat a defendant's motion for summary judgment under the direct method of proof by pointing to direct evidence of discrimination or to a "convincing mosaic of circumstantial evidence. . . ." *Hobgood v. Illinois Gaming Bd.,* 731 F.3d 635, 641-42 (7th Cir. 2013)(quoting

Rhodes v. Illinois Dep't of Transp., 359 F.3d 498, 504 (7th Cir. 2004)). Under the indirect method of proof, a plaintiff who is bringing a Title VII retaliation claim must first establish a *prima facie* case. *Hobgood*, 731 F.3d at 641-42. A plaintiff can establish a *prima facie* case by showing: (1) that the "plaintiff engaged in activity protected by law," (2) that "he met his employer's legitimate expectations, *i.e.*, he was performing his job satisfactorily," (3) that "he suffered a materially adverse action," and (4) that "he was treated less favorably than a similarly situated employee who did not engage in the activity protected by law." *Id.*; *see also Whittaker v. Northern Illinois University*, 424 F.3d 640, 648 (7th Cir. 2005)(explaining that the definition of an adverse action is broader in the retaliation context than in the discrimination context). If the plaintiff establishes a *prima facie* case, the burden shifts back to the employer to present a legitimate, non-discriminatory reason for the adverse employment action. *Hobgood*, 731 F.3d at 641-42. If the employer provides such a reason, the burden then shifts back to the plaintiff to show that the employer's reason is pretext. *Id.*

In the instant action, Hoekstra has not pointed to sufficient evidence to proceed under the direct method of proof. For example, Hoekstra accuses Haynes of swerving a scooter near Hoesktra as part of a hidden conspiracy of retaliation. (R SF Par. 56-58). However, Hoekstra has pointed to no evidence tying Haynes to others associated with alleged harassment or retaliation. Hoekstra's personal belief and speculation in the absence of evidence are not sufficient to show any causal connection under the direct method of proof. *See Greengrass v. Int'l Monetary Sys.*

Ltd., 776 F.3d 481, 485 (7th Cir. 2015)(explaining a three-prong approach to the direct method of proof). Nor has Hoekstra pointed to sufficient evidence, even when considering it in its totality, to create a convincing mosaic of circumstantial evidence. In regard to the indirect method of proof, Hoekstra has not pointed to similarly-situated employees outside the protected class who were treated more favorably. (SJ Opp. 15-17). In addition, Ford has provided legitimate non-discriminatory reasons for any actions taken that Hoekstra contends adversely affected her. For example, Hoekstra claims that Ford cleaned out her locker during one of her medical leaves as retaliation for her complaining about alleged harassment. (R SF Par. 72). Ford, in response, has explained its security policy for emptying lockers that appeared to be vacant. (R SF Par. 72-74). The burden thus shifted to Hoekstra to show that the given reasons were a pretext for unlawful retaliation. Hoekstra, however, fails in her opposition to the instant motion to even address the pretext requirement. (SJ Opp. 15-18). Hoekstra provides only an incomplete recitation of the indirect method of proof and has failed to point to sufficient evidence to support her retaliation claim. (SJ Opp. 15). Therefore, Ford's motion for summary judgment on the Title VII retaliation claim is granted.

IV. Remaining State Law Claim

Once the federal claims in an action no longer remain, a federal court has discretion to decline to exercise supplemental jurisdiction over any remaining state law claims. *See Wright v. Associated Ins. Cos.*, 29 F.3d 1244, 1251-52 (7th Cir.

1994)(stating that "the general rule is that, when all federal-law claims are dismissed before trial, the pendent claims should be left to the state courts"). The Seventh Circuit has indicated that there is no "'presumption' in favor of relinquishing supplemental jurisdiction. . . ." *Williams Electronics Games, Inc. v. Garrity*, 479 F.3d 904, 906-07 (7th Cir. 2007). The Seventh Circuit has stated that, "in exercising its discretion, the court should consider a number of factors, including "the nature of the state law claims at issue, their ease of resolution, and the actual, and avoidable, expenditure of judicial resources. . . ." *Timm v. Mead Corp.*, 32 F.3d 273, 277 (7th Cir. 1994). The court has considered all of the pertinent factors and, as a matter of discretion, the court declines to exercise supplemental jurisdiction over the remaining state law claims. The instant action is still in the pre-trial stage and there is not sufficient justification to proceed solely on the remaining state law claim. The remaining state law claim is therefore dismissed without prejudice.

CONCLUSION

Based on the foregoing analysis, Ford's motion for summary judgment is granted in part, and denied in part, and the remaining state law claim is dismissed without prejudice.

Samuel Der-Yeghiayan
United States District Court Judge

Dated: October 27, 2015

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EEOC Charge Number: 440-2013-03389

Heather Hoekstra
c/o The Moran Law Group
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Chicago, IL 60606 — Charging Party

v.

Ford Motor Company
1000 East Lincoln
Chicago Heights, IL 60411 — Respondent

Ford Motor Company
1 American Road
Dearborn, MI 48126 — Respondent

DETERMINATION

Under the authority vested in me by the Procedural Regulations of the Equal Employment Opportunity Commission (EEOC), I issue the following determination on the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended (Title VII).

The Respondent is an employer within the meaning of Title VII and all requirements for coverage have been met.

The Charging Party alleged that she was discriminated against based on her sex, female, in that she was subjected to sexual harassment and that she was subjected to further harassment and different terms and conditions of employment in retaliation for engaging in protected activity, in violation of Title VII.

I have determined that the evidence obtained in the investigation establishes reasonable cause to believe that Respondent discriminated against Charging Party and a class of employees based on their sex, female, in that they were subjected to sexual harassment and gender based harassment, in violation of Title VII.

I have further determined that the evidence obtained in the investigation establishes reasonable cause to believe that Respondent retaliated against Charging Party and a class of employees for engaging in protected activity, by subjecting them to different terms and conditions of employment, including, but not limited to, reassigning them to less favorable job assignments

and/or shifts, denying them overtime opportunities and/or transfers, subjecting them to discipline, and/or discharging them, in violation of Title VII.

This determination is final. When the Commission finds that a violation has occurred, it attempts to eliminate unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 C.F.R. Part 1601.26).

If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so at this time by proposing terms for a conciliation agreement; that proposal should be provided to the Commission representative within 14 days of the date of this determination. The remedies for violations of the statutes we enforce are designed to make the identified victims whole and to provide corrective and preventive relief. These remedies may include, as appropriate, an agreement by the Respondent not to engage in unlawful employment practices, placement of identified victims in positions they would have held but for discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission representative. Should there be no response from the Respondent in 14 days, we may conclude that further conciliation efforts would be futile or nonproductive.

On Behalf of the Commission:

2/20/15
Date

Julianne Bowman
Acting District Director