

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FRANCES AYERS

:

v.

:

Civ. No. 3:99cv935(AHN)

STATE OF CONNECTICUT
JUDICIAL BRANCH

:

RULING ON MOTION FOR SUMMARY JUDGMENT

In this employment discrimination action, the plaintiff, Frances Ayres ("Ayres") asserts claims under Title VII, 42 U.S.C. § 2000e, 42 U.S.C. § 1983, and the Connecticut Unfair Employment Practices Act, Conn. Gen. Stat. § 46a-60 ("CFEPA"). Presently pending is the motion of the defendant, State of Connecticut Judicial Branch ("Judicial Branch") for summary judgment.

For the following reasons, the motion [doc. # 24] is GRANTED in part and DENIED in part.

BACKGROUND

Ayres, a court reporter for the Judicial Branch, alleges that she was the victim of repeated incidents of sexual harassment and abuse including one incident of physical assault by Stanley Kubovy ("Kubovy"), a maintenance worker who was also employed by the Judicial Branch. She alleges that she repeatedly complained about the harassment to her superiors, but that they rejected her complaints and sided with the harasser and retaliated against her for

complaining.

The Judicial Branch has moved for summary judgment on all three of Ayres's claims. Specifically, it asserts that the CFEPA and § 1983 claims are barred by the Eleventh Amendment. It moves for summary judgment on the Title VII claim on the grounds that the undisputed facts do not establish that the alleged harassment was sufficiently severe or pervasive and did not alter the conditions of Ayres's work environment. It also maintains that it cannot be held liable as a matter of law because there is no basis for imputing Kubovy's conduct to it.

Ayres does not dispute the Judicial Branch's claim that this court lacks jurisdiction over the § 1983 and CFEPA claims. She consents to the dismissal of the § 1983 claim with prejudice and dismissal of the CFEPA claim without prejudice to refiling in state court. She opposes the Judicial Branch's motion for summary judgment on the Title VII claim on the grounds that there are material factual issues in dispute which require resolution at trial.

STANDARD

In reviewing the evidence on a motion for summary judgment, the court must "assess the record in the light most favorable to the non-movant and . . . draw all reasonable

inferences in its favor." Weinstock v. Columbia Univ., 224 F.3d 33, 41 (2d Cir. 2000). To defeat summary judgment, the non-movant's must present more than speculation and conjecture, but the evidence she does present must be accepted as true. See Stern v. Trustees of Columbia Univ., 131 F.3d 305, 315 (2d Cir. 1997). The court must view the evidence as a whole and take into account all of the circumstances and then decide if the evidence can reasonably and logically give rise to an inference of discrimination. See Bickerstaff v. Vassar College, 196 F.3d 435, 448 (2d Cir. 1999), cert denied, 530 U.S. 1242 (2000). Determining whether harassment causes a hostile work environment involves an application of the facts--the specific discriminatory conditions alleged by the plaintiff--to the law. Such mixed questions of law and fact are "especially well-suited for jury determination and summary judgment may be granted only where application of the law to the undisputed facts reasonably supports only one ultimate conclusion." See Richardson v. New York State Dept. of Corr. Serv., 180 F.3d 46, 438 (2d Cir. 1999).

DISCUSSION

The Supreme Court has held that a Title VII hostile environment claim can succeed only where the conduct at issue is so severe or pervasive that it creates an objectively

hostile or abusive work environment and where the victim subjectively perceives the environment to be abusive. See Harris v. Forklift Sys., 510 U.S. 17, 21-22 (1993). To prevail on summary judgment, an employer must establish that no reasonable jury could find that the victim subjectively perceived her environment to be hostile and abusive and that a reasonable person who was the target of such sexual harassment would find the conditions so severe and pervasive as to alter the terms and conditions of employment and create an abusive working environment. See e.g., Howley v. Town of Stratford, 217 F.3d 141, 153 (2d Cir. 2000); Richardson, 180 F.3d at 436 & n.3.

In other words, to establish a claim under a hostile work environment theory, the plaintiff must show more than a few isolated or sporadic minor incidents. See Schwapp v. Town of Avon, 118 F.3d 106, 110 (2d Cir. 1997). But, “[b]y its nature, a hostile environment analysis does not lend itself to a mathematically precise test and there is neither a threshold magic number of harassing incidents that give rise, without more, to liability as a matter of law, nor a number of incidents below which a plaintiff fails as a matter of law to state a claim.” Williams v. Board of Hudson River/Black River Regulating Dist., No. 99cv1282, 2001 U.S. Dist. Lexis 16124,

at * 13 (N.D.N.Y. Sept. 23, 2001) (quoting Richardson, 180 F.3d at 439). "Although a continuing pattern of hostile or abusive behavior is ordinarily required to establish a hostile environment, a single instance can suffice if it is sufficiently egregious." Ferris v. Delta Air Lines, 277 F.3d 128, 135 (2d Cir. 2001).

As a general rule, the totality of the circumstances must be considered and the quantity, frequency and severity of the incidents must be evaluated. See Schwapp, 118 F.3d at 111. In addition, to obtain a realistic view of the working environment the court should also consider whether the conduct was physically threatening or humiliating, whether it unreasonably interfered with the plaintiff's work, and whether it caused any psychological harm. See Quinn v. Green Tree Credit Corp., 159 F.3d 759, 767-68 (2d Cir. 1998).

Here, Ayres submits evidence showing that the first of Kubovy's acts of harassment occurred in 1994, when he followed her into the woman's bathroom. She claims that she reported this act, but that Kubovy's harassing conduct continued. He followed her, hovered around her work space, made repeated comments concerning her hair, her legs and her weight, gave her gifts and asked her out on dates, and then, in July, 1997, he physically assaulted her by striking her on her buttocks

with his hand in the presence of her young son. Ayres also submits evidence that Kubovy's conduct caused her to suffer psychological harm for which she sought and received treatment.

Viewing this evidence in its totality and in a light most favorable to Ayres, the court cannot conclude as a matter of law that Kubovy's conduct was not so severe and pervasive as to alter the terms and conditions of Ayres's employment for the worse. Indeed, the one incident of assault alone could be sufficient to support a finding of a hostile work environment. See Ferris v. Delta Air Lines, 277 F.3d at 135 (noting that a single incident of hostile or abusive behavior can suffice to create a hostile environment if it is sufficiently severe) (citing Tomka v. Seiler Corp., 66 F.3d 1295, 1305 (2d Cir. 1995)) ("Even a single incident of sexual assault sufficiently alters the conditions of the victim's employment and clearly creates an abusive environment for purposes of Title VII liability"), abrogated on other grounds by Burlington Indus. Inc. v. Ellerth, 524 U.S. 742 (1998).

There is also no merit to the Judicial Branch's claim that Kubovy's conduct cannot be attributed to it because it responded in a reasonable and adequate manner to Ayres's complaints.

It is well settled that an employer can only be liable for harassment by a victim's co-worker if the employer was negligent--that is, only if it failed to provide a reasonable avenue for complaint or knew of the harassment but did nothing about it. See Quinn, 159 F.3d at 766. If the evidence creates an issue of fact as to whether an employer's action is effectively remedial and prompt, summary judgment is inappropriate. Richardson, 180 F.3d at 441 (noting that the employer is liable for any hostile work environment created by a victim's co-worker unless it can show that it took immediate and appropriate remedial action) (quoting Gallagher v. Delaney, 139 F.3d 338, 348 (2d Cir. 1997)).

Here, Ayres has created a triable issue as to whether the Judicial Branch took appropriate action. Her evidence shows that four days after the incident involving the physical assault she reported it to the Judicial Branch's local administrators, but heard nothing from them for one month. When she then inquired into the status of her complaint she received nothing but a hostile reaction. A month later she filed a grievance with the Judicial Branch complaining about its failure to properly investigate her claim and the unfair treatment she had received. She waited one more month before making another inquiry, but did not receive any response until

another month passed. At that time, she was notified that her complaint had been reviewed and no remedial or disciplinary action would be taken against Kubovy. Ayres further claims that after she filed the complaint she was treated unfairly by the local branch administrators and was subjected to such severe retaliation that she was forced to leave her employment.

The Judicial Branch does not dispute Ayres's chronology of events surrounding the filing of her complaint, but maintains that its response was sufficiently and effectively remedial and prompt to shield it from liability as a matter of law. The court disagrees. While a factfinder may conclude that the Judicial Branch's response was reasonable and adequate, the record evidence does not compel only that conclusion and thus summary judgment is not appropriate. See Richardson, 180 F.3d at 442.

Finally, the court also does not agree with the Judicial Branch's assertion that Ayres's claims alleging conduct that occurred more than 300 days prior to January 8, 1998, the date she filed her EEOC complaint, are time barred by Title VII's limitations period. There is no merit to its assertion that the continuing violation theory is not available to Ayres because it only "applies to cases involving specific

discriminatory policies or mechanisms such as discriminatory seniority lists . . . and that even several incidents of discrimination which are not part of a mechanism or policy do not constitute a continuing violation." The Second Circuit expressly rejected this assertion in Fitzgerald v. Henderson, 251 F.3d 345, 359 (2d Cir. 2001).

In Fitzgerald, the court had, inter alia, "doctrinal" difficulties with the district court's ruling that the plaintiff was not entitled to invoke the continuing violation theory because she had not alleged a formal or widespread identifiable discriminatory practice or policy in her administrative complaint. Further, the court "[m]ost fundamentally disagree[d] with the assumption that [the plaintiff] could not avail herself of the continuing violation theory unless she could prove that [her employer] had a formal discriminatory practice or policy." Id. at 362. To the contrary, the court ruled that "the continuing violation theory may be used where there have been specific and related instances of discrimination, and the employer has permitted them to continue unremedied for so long that its inaction may reasonably be viewed as tantamount to a policy or practice of tolerating such discrimination." Id. The court further held that a plaintiff could invoke the continuing violation theory

without showing that the discrimination was widespread. See id.

Under the continuing violation doctrine, the commencement of the limitations period is delayed until the last act in a series constituting the alleged harassment. See id. at 359. Application of the doctrine gives the court jurisdiction over claims that are not pursued before the administrative agency so long as they are reasonably related to the claims that were asserted. See id. A claim is reasonably related if the conduct complained of would fall within the scope of the EEOC investigation that could reasonably be expected to grow out of the charge that was made. See id. Successive conduct that is part of a continuing wrong is by its very nature reasonably related to the earlier conduct. But the plaintiff may not claim a continuing violation unless she asserted it in the administrative proceedings. See id.

Here, the plaintiff asserted a continuing violation in her administrative proceeding and her factual account shows repeated and related instances of harassment which depict a continuous pattern of allegedly unlawful conduct. Accordingly, she is entitled to present to a jury all acts of harassment that are reasonably related to the claims raised in her EEOC proceeding.

CONCLUSION

For all of the foregoing reasons, the motion of the Judicial Branch for summary judgment [doc. # 24] is GRANTED in part and DENIED in part. The Judicial Branch has not sustained its burden of establishing that it is entitled to judgment as a matter of law on Ayres's sexual harassment claim and its motion as to that claim is DENIED. As to Ayres's claim under § 1983, the motion is GRANTED absent objection. In addition, the motion for summary judgment on Ayres's CFEPA claim is GRANTED without prejudice to refileing in state court.

SO ORDERED this day of March, 2002 at Bridgeport,
Connecticut.

Alan H. Nevas
United States District Judge