

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

INGRID WALKER,
Plaintiff,
v.
THE ACCESS AGENCY,
Defendant.

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3:02CV199(AHN)

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Ingrid Walker ("Walker") brings this action against her former employer, The Access Agency ("Access"), alleging statutory violations under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, the Federal Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, and the Connecticut Fair Employment Practices Act ("CFEPA"), Conn. Gen. Stat. § 46a-60. Walker also alleges a state law claim for negligent infliction of emotional distress.

Access now moves for summary judgment on all counts of Walker's complaint. For the following reasons, Access's motion [dkt. # 22] is granted in part and denied in part.

FACTS

The evidence submitted to the court reflects the following undisputed material facts construed in the light most favorable to Walker.

Access is a non-profit agency providing community services in Connecticut, particularly energy assistance, child

and adult care food programs, job counseling, and an emergency shelter. The majority of Access's operating revenue comes from grants and public contracts for those services.

Walker was employed by Access from June 20, 1977, until she was laid off on April 20, 2001, at the age of fifty-seven. She was initially hired as a program developer, but thereafter worked as the Director of Planning and Programming Development and as the Interim Executive Director. From 1993 to November 2000, Walker was employed as the Director of Economic Development.

In May 2000, Access discontinued its early childhood services which, at that time, constituted over forty percent of its operating budget. As a result, Access laid off some of its employees. See Access's CHRO Layoff Form, Def. Ex. 1-D (reflecting three additional layoffs and one voluntary designation due to a loss of funding for the same period). Access also retained an outside accounting firm, Disanto Bertoline & Co. ("Disanto"), to prepare a financial forecast and make recommendations about cutting costs and increasing revenue. Disanto's plan, issued on October 31, 2000, called for eliminating central administrative staff positions, including the Director of Economic Development position held by Walker.

On November 7, 2000, Anita Connor ("Connor"), then Acting Executive Director, informed Walker that her position was being terminated and that she was being laid off because of the restructuring. Walker also learned that a less senior employee, Robyn Denson ("Denson"), who was less than half Walker's age, would remain in the subordinate position of Director of Program Development. Upon learning this, Walker became very upset. Even though Denson's job duties were different from Walker's, Walker felt that she was being replaced by a younger and less experienced employee. Walker told Connor that the decision was discriminatory and that she planned to consult an attorney.¹

The next day, November 8, 2000, Connor told Walker that Access would layoff Denson and that Walker could take her place in the program development position, at the comparatively reduced salary it paid.² Walker asked to have until November 17 to consider the offer. When Walker did not

¹ While neither party is certain of Walker's exact statement to Connor, see Pl. Loc. Rule Stat., Dep. of Ingrid Walker at 40; Def. Ex. 2, Connor Dep. at 130-31, for purposes of this motion the court construes any ambiguity in favor of Walker and assumes that she made an explicit complaint of age discrimination.

² Access's payroll records for the period ending November 4, 2000, show that Walker earned a gross biweekly salary of \$2,122, while Denson earned \$1,538 for the same period. See Def. Ex. 1-I.

have a definite answer on that date, she and Connor agreed to meet on November 21. Walker, however, failed to keep the November 21 appointment because she went on medical leave that very same day. Walker submitted a medical note that indicated she was suffering from anxiety and depression, was taking three different prescription medications, and required monitoring. Upon learning of Walker's leave, Connor told the administrative services director, Nora Gregonis ("Gregonis"), that she did not believe Walker was sick. Despite Connor's personal beliefs, Walker qualified for short-term disability benefits from December 4, 2000, to February 28, 2001.

On November 28, 2000, Connor formally notified Walker by letter that her position as Director of Economic Development would terminate on December 1, 2000. On November 30, 2000, Walker informed Connor that she would accept the position of Director of Program Development and that she wanted to discuss the job when she returned to work.

Walker's medical leave ended on February 28, 2001, but she was having second thoughts about returning to work because she believed that her relationship with Connor was permanently destroyed. Thus, Walker retained an attorney to negotiate a severance package in lieu of taking the program development position. See Def. Ex. 1-S. Both parties agreed that Walker

would not return to work while negotiations were ongoing. Ultimately, the parties were unable to reach an agreement and Walker was scheduled to return to work on March 15, 2001. However, due to continued financial constraints,³ Access was unsure whether the program development position would remain. Thus, the parties agreed that Walker would not return to work until Access was certain it would keep the position in place. See Def. Ex. 3.

On April 17, 2001, Access notified Walker in writing that, effective April 20, 2001, the entire development department, including the program development position that Walker had accepted, would be eliminated. See Def. Ex. 1-0. In its place, Access's new Executive Director, Rocco Tricarico ("Tricarico"), would take responsibility for most of the development department's functions. In addition, Access retained Denson, who had been continually working as Director of Program Development while Walker was on leave, to complete the department's existing projects by the end of that fiscal year, June 30, 2001.

On June 30, 2001, Denson was laid off as a full-time

³ In particular, Access was notified on April 4, 2001, that its services contract with Generations Family Health Center, Inc. ("Generations"), who was a major client, would not be renewed after June 30, 2001. See Def. Ex. 1-Q.

employee. However, pursuant to a job proposal for employment that Denson had submitted on April 16, 2001, at Tricarico's behest, Denson was simultaneously re-hired as an independent contractor to write grants. See Pl. Ex., Dep. of Rocco Tricarico at 23-24. Her duties in that position remained substantially the same as they had been in the program development position, see id. at 28, but her compensation was substantially reduced; she did not receive benefits and worked an average of only ten to fifteen hours per week. See Pl. Ex., Dep. of Robyn Denson at 33-34.

In January 2002, when new funding became available, Access hired Denson on a full-time basis, again as Director of Program Development -- the same position that Access eliminated in April 2001 when it discharged Walker. See Pl. Ex., "New Hire Form."

STANDARD

Summary judgment will be granted if the record demonstrates that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See Chambers v. TRM Copy Ctrs. Corp., 43 F.3d 29, 36 (2d Cir. 1994); Fed.R.Civ.P. 56(c). A genuine issue of material fact exists only if the record, taken as a whole,

could lead a reasonable trier of fact to find in favor of the nonmovant. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

The burden of demonstrating the absence of any genuine issue of material fact rests on the moving party, see Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986), and all ambiguities and inferences that may reasonably be drawn from the facts must be viewed in the light most favorable to the nonmoving party, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986).

Where, as here, the nonmovant bears the burden of proof at trial, the movant can satisfy its burden of production by pointing to an absence of evidence to support an essential element of the nonmovant's case. See Ginsberg v. Healey Car & Truck Leasing, Inc., 189 F.3d 268, 270 (2d Cir. 1999) (citing cases).

DISCUSSION

I. Age Discrimination

Walker alleges that Access violated the ADEA when it laid her off, but retained Denson, a much younger and less experienced employee. More specifically, Walker argues that Access's decision to terminate her from the economic development position and to later eliminate the entire

development department, when viewed in the context of Access's concomitant decision to retain Denson as an independent contractor, as well as its subsequent rehire of Denson as a full-time employee in January 2002, constitutes age discrimination in violation of the ADEA and the CFEPFA.⁴ Access argues that summary judgment is appropriate because Walker cannot establish either a prima facie case of age discrimination, or that the reason it has articulated for its actions is pretextual.

Under the ADEA, it is "unlawful for an employer . . . to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1). ADEA claims are analyzed under Title VII's burden-shifting framework set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See Schnabel v. Abramson, 232 F.3d 83, 87 (2d Cir. 2000).

First, a plaintiff must establish a prima facie case of age discrimination. If the plaintiff makes out a prima facie

⁴ Because Connecticut law in relevant part follows the ADEA, see Levy v. Comm'n on Human Rights & Opportunities, 236 Conn. 96, 103, 107-09 (1996), the court considers Walker's CFEPFA claim together with her ADEA claim on the basis of federal precedent.

case, the burden shifts to the employer to articulate a legitimate, nondiscriminatory business rationale for its action. If the employer articulates such a reason, the burden then shifts back to the plaintiff to show that the employer's proffered reason is mere pretext and that age was the true motivating factor. See id.

A. Prima Facie Case

In order to establish a prima facie case of age discrimination, Walker must show (1) that she was within the protected age group, (2) that she was qualified for the positions at issue, (3) that she was terminated from those positions, and (4) that the terminations occurred under circumstances giving rise to an inference of age discrimination. See id. While there can be no dispute that Walker satisfies the first three requirements, it is not equally clear that she can establish that the challenged employment decisions in November 2000 and April 2001 give rise to an inference of discrimination. Nonetheless, because the court resolves all factual ambiguities here in Walker's favor, it finds sufficient evidence to establish a prima facie case of age discrimination.

First, Walker falls within the protected age group

because she was fifty-seven when she was laid off. See 29 U.S.C. § 631(a) (setting the threshold age at forty years old). Second, Walker's twenty-three years at Access and her work performance evaluations, see Def. Ex. 1-A, demonstrate that she was qualified to serve as both the Director of Economic Development as well as the Director of Program Development. See Schnabel, 232 F.3d at 87 (finding it significant that the plaintiff had extensive experience in his field). Third, Walker suffered adverse employment actions when she was demoted and subsequently laid off. Fourth, a jury could find that Access had effectively retained a twenty-six-year-old to perform all or most of Walker's duties after she was laid off in April 2001, and thus Walker's layoff occurred under circumstances giving rise to an inference of age discrimination.

B. Access's Articulated Reason for Its Termination of Walker's Employment

Access presents three legitimate, nondiscriminatory reasons for eliminating Walker's economic development position and the development department altogether: 1) financial constraints caused by decreased funding; 2) Walker's prolonged absence from the agency; and, 3) serious questions about Walker's commitment and desire to continue working for Access in a significantly reduced salary. The court finds that the

record on summary judgment corroborates Access's arguments.

First, Access has submitted a plethora of evidence demonstrating that its financial troubles began as early as April 2000 and culminated a year later, in April 2001, when it lost a major services contract with Generations for the following fiscal year. Due to its financial problems, Access decided to eliminate the entire development department and transfer the bulk of the department's duties to Tricarico, its new executive director. Because the program development position was a part of that department, the position, which Walker had accepted in November 2000 but had not worked in because of her medical leave, was eliminated and Walker was laid off.

Second, the summary judgment record demonstrates that Access had nondiscriminatory business reasons for permitting Denson to continue working for Access after Walker was terminated on April 20, 2001. Specifically, Denson was familiar with ongoing projects that needed to be completed by the June 30, 2001, deadline because she had been continuously working in the program development position while Walker was on medical leave. Then, from June 30, 2001, until January 2, 2002, Denson worked at Access as an independent contractor, with hours averaging only ten to fifteen hours per week. When

new funding became available in January 2002, Denson was rehired on a full-time basis. Walker, in turn, presents no evidence that creates a factual dispute or that gives rise to an inference of Access's intentional age-based discrimination.

Third, the court finds that based on the summary judgment record, Access had a legitimate, nondiscriminatory basis for questioning Walker's desire and commitment to work in the program development position. Although the summary judgment record indicates that Walker accepted the lesser program development position that Denson had been working in, Walker did so with obvious reluctance. That is, Walker was offered the position in lieu of a layoff on November 8, and a week later, on the very same day that she had promised Connor a response, November 21, 2001, Walker went on medical leave until February 28, 2001. Walker did not affirmatively accept the position until nearly a month after Connor made the offer. Also, Tricarico testified at his deposition that it was Access's understanding that Walker could have resumed her employment at Access at any time and Denson would have been laid off. See Pl. Ex., Tricarico Dep. at 83. But, once Walker's medical leave came to an end, rather than return to work and replace Denson in the program development position,

Walker retained an attorney to negotiate a severance package. Walker, in turn, presents nothing to negate Access's belief that she was neither committed nor motivated to return to Access in the program development position. And, Walker cannot seriously contend that the ADEA, in light of its prohibition against age-based discrimination, also makes it unlawful for an employer to exercise broad discretion in reaching legitimate business goals, such as ensuring financial feasibility and hiring committed employees. That is simply not the case.

C. Pretext

Because Access has articulated legitimate, nondiscriminatory reasons for laying off Walker in April 2001, the burden shifts back to Walker to show that Access's proffered reasons are pretextual. See, e.g., Slattery v. Swiss Reinsurance Am. Corp., 248 F.3d 87, 91 (2d Cir. 2001); Schnabel, 232 F.3d at 88. Walker principally relies on Access's continued employment of Denson -- first as an independent contractor and then as a full-time employee -- beyond the fiscal year ending June 30, 2001. Walker also asserts that because she agreed to take the program development position at the reduced salary, it would not have been any more expensive for Access to employ her rather than

Denson.

To defeat summary judgment, Walker must submit evidence that shows or creates a triable issue of fact as to whether discrimination was the real reason for Access's employment action. See Zimmerman v. Assocs. First Capital Corp., 251 F.3d 376, 382 (2d Cir. 2001). To satisfy this burden, Walker may rely on her prima facie and pretext evidence alone, or she may point to other evidence in the record. See Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 148-49 (2000).⁵

Here, Walker submits evidence that she was laid off on April 20, 2001, while Denson, a younger and less-experienced employee, continued to work at Access after the fiscal year ended on June 30, 2001. However, even when viewed in the light most favorable to Walker, this evidence is not sufficient to permit a finding that Access's decision was based, at least in part, on Walker's age.

Access's decision to lay off Walker and to continue employing Denson past June 30, 2001, initially as an independent contractor and later as a full-time employee, does

⁵ While Reeves dealt with a post-verdict motion for judgment as a matter of law, it applies with equal force on a motion for summary judgment. See id. at 150 (stating that the standard for granting summary judgment mirrors the standard for judgment as a matter of law, such that the inquiry under each is the same).

not show that Access committed impermissible age-based discrimination. As discussed supra in Section I.B., the summary judgment record provides ample support for Access's three reasons for its action. That is, the record reflects continued financial hardships at Access -- which are well-documented and have been conceded to by Walker -- that ultimately required the elimination of the entire development department. While Denson remained employed at Access, her employment was as an independent contractor; she worked only an average of ten to fifteen hours per week and did not receive benefits. In turn, Walker does not argue that she would have continued to work at Access as an independent contractor. In fact, the evidence in the record warrants the opposite inference because Walker was reluctant to even continue in the program development position, which carried a lower salary than she had been making up to November 2000, and which, in her opinion, constituted a demotion. The evidence demonstrates that the terms of the independent contractor position that Denson worked in were still less attractive. Thus, a jury could easily find that it was reasonable for Access to question Walker's commitment and enthusiasm for returning to work in a position that was essentially a demotion for her, and that Denson, who was familiar with

ongoing grant writing projects, was a more attractive employee to retain, regardless of age. See Reeves, 530 U.S. at 141 (ADEA liability depends on whether age actually motivated an employer's decision). Therefore, because the summary judgment record reveals that Access's reasons fully explain why Access laid off Walker but decided to retain Denson, first as an independent contractor and later as a full-time employee, the court finds that a jury could not reasonably decide that Access was motivated by impermissible age-based discrimination.

In reaching this conclusion, the court notes a recent ADEA case decided in the Second Circuit, James v. New York Racing Assoc., 233 F.3d 149 (2d Cir. 2000). In that case, the Second Circuit affirmed a district court's summary judgment in favor of the employer. The plaintiff was 59 years old and had been employed as the Assistant Security Director for the defendant. He claimed that he was terminated because of his age. His employer stated the plaintiff was terminated because of downsizing. However, one week after the plaintiff was fired, the employer hired a 42 year-old to work in essentially the same position that the plaintiff had held. See id. at 152. Although the new hire had a different job title and earned a slightly lower annual salary than the plaintiff had,

all other aspects of the new hire's employment were the same as plaintiff's had been: the new hire was placed at plaintiff's former desk, he was assisted by plaintiff's former secretary, and he took over many of plaintiff's former duties. The Court found that the plaintiff established a prima facie case of age discrimination by showing that he was replaced by a younger person. See id. at 153. It also reasoned that "the [plaintiff's] proffered evidence . . . could permit a finder of fact to conclude that the employer's given reason . . . could not adequately explain [the plaintiff's] removal and might therefore be false." Id. Nonetheless, the Court held that despite plaintiff's prima facie and pretext evidence, the record as a whole could not reasonably support an inference that the plaintiff's discharge had been motivated by age-based animus. See id. at 152, 157. The Court reasoned that while hiring a new employee was inconsistent with the employer's asserted reason for terminating the plaintiff, there was other evidence that supported the employer's claim -- "a bona fide reduction in force, motivated by the need to save large amounts of operating costs." Id. at 152. It found that the plaintiff failed to proffer any evidence from which a jury could have inferred that the asserted pretextual reason was intended to mask age discrimination rather than some other

permissible basis. Id. at 157.

Likewise, in this case, Walker has not met her burden of producing the requisite evidence. Even though she offers evidence of Denson's continued employment at Access, that evidence alone could not allow a jury to infer that age, and not some other permissible basis, was the real reason for her layoff. See Reeves 530 U.S. at 148 (reasoning that "an employer would be entitled to [summary judgment] if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision). In particular, Walker fails to provide any evidence rebutting the portions of the summary judgment record that substantiate Access's financial problems, its legitimate non-age-based decision to continue Denson's employment, and its conclusion that Walker was neither motivated nor committed to work for Access in a position that was effectively a demotion. Cf. Zimmerman v. Assocs. First Capital Corp., 251 F.3d 376, 383 (2d Cir. 2001) (affirming a jury's verdict of gender discrimination on the sufficiency of the evidence presented at trial where the plaintiff, who was a female, was fired from her job as an assistant vice-president at a financing services firm, by a new manager, a male, after only two months of working for

him, and finding that the manager "failed to offer a single item of documentary evidence to support [his] assertion that [he] fired [the plaintiff] for inferior performance thus creating a factual dispute from which a jury could have inferred that discrimination was the true reason for the plaintiff's termination). The court cannot find, therefore, that Walker's evidence would permit a jury to reasonably conclude that, more likely than not, Walker's layoff was due to her age. In other words, to the extent that Walker has created an issue of fact as to whether or not Access's loss of funding was the true reason for her layoff, it is only a weak one. See Reeves, 530 U.S. at 147-49. Furthermore, Walker altogether fails to negate Access's other reasoning for its decision, namely that Access questioned Walker's desire to remain at Access, and that it was simply more efficient for Access to retain Denson rather than Walker because of her familiarity with ongoing projects. See id.

II. ADEA Retaliation

Walker also alleges that Access retaliated against her when it laid her off from the program development position in April 2001 for making an age discrimination complaint to Connor in November 2000. Access contends that Walker's claim fails because there is no evidence from which a reasonable

jury could find retaliation. The court agrees.

Walker's retaliation claim is analyzed under the same McDonnell Douglas burden-shifting framework used above. See Slattery, 248 F.3d at 94-95. To establish a prima facie case of retaliation, Walker must show that 1) she engaged in a protected activity; 2) Access was aware of the activity; 3) Access took adverse action against her; and 4) there was a causal connection between the protected activity and the adverse action which gives rise to an inference of retaliatory intent. See id. (citing cases). Viewing all factual ambiguities in Walker's favor, the court finds that Walker fails to establish a prima facie case of retaliation because there is no evidence of a causal connection between her complaint of discrimination and her subsequent layoff.

Access cannot seriously dispute that Walker has established the first three elements of her prima facie retaliation claim. First, Walker engaged in a protected activity in November 2000 when she complained to Connor that she was being discriminated against because of her age. Second, Access was aware of Walker's activity by virtue of that complaint. Third, Walker suffered an adverse action because she was subsequently laid off from the program development position in April 2001.

Nonetheless, a jury could not find the requisite causal connection between Walker's complaint and her layoff. Walker's only evidence for finding such a connection is time. She argues that her April 2001, layoff followed her November 2000, complaint of age discrimination closely enough to support an inference of retaliation. While temporal proximity can demonstrate a causal connection, the specific facts of this case do not permit such a finding. In particular, the record demonstrates that Access had financial difficulties which began nearly a year before Walker's April 2001, layoff. In fact, Access's loss of funding resulted in two layoffs in July 2000. Additionally, the record indicates that just days before Walker was laid off, Access lost a major services contract with Generations. Based on that loss, Access decided to eliminate the entire development department, which included the program development position that Walker had accepted.

"Where timing is the only basis for a claim of retaliation, and gradual adverse job actions began well before the plaintiff had ever engaged in any protected activity, an inference of retaliation does not arise." Id. at 95. The Slattery Court held that the plaintiff's filing of an age discrimination complaint was not causally connected to either his subsequent probation, which occurred eight months after

his complaint, or his ultimate termination, which occurred another seven months after that. Instead, the Court found that the adverse employment actions were "both part, and the ultimate product, of an extensive period of progressive discipline which began . . . a full five months prior to [the plaintiff's] filing of the [discrimination] charges." As in Slattery, Walker fails to establish a factual dispute that the April 2001 layoff was not part and parcel of an extensive period of financial difficulty at Access, but rather was based on retaliatory animus for her previous discrimination claim. Apart from temporal proximity, Walker does not base her ADEA retaliation claim on any other argument. Therefore, the court grants summary judgment in favor of Access on this issue as well.

III. FMLA Retaliation

Walker also claims that the April 2001, layoff was in retaliation for taking medical leave from December 2000, to February 2001. Access contends that this claim must fail because a reasonable jury could not conclude that Walker's leave played a part in Access's decision to lay her off. The court does not agree.

Under the FMLA, employees are entitled to twelve weeks of leave each year to treat a serious illness or to care for

family members. See 29 U.S.C. § 2612. The Act guarantees reinstatement of employment upon the end of an employee's leave. See id. at § 2614(a). Section 2615(a)(1) of the FMLA makes it unlawful for employers to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right that it provides. Further, § 2615(a)(2) prohibits employers from discharging or in any other manner discriminating against any individual for opposing any practice made unlawful by the FMLA.

Here, Walker's complaint alleges that after taking medical leave she was terminated. However, Walker's moving papers indicate that she is unsure whether her FMLA claim should proceed

under subsection (a)(1) or (a)(2). The court finds that Walker's FMLA claim is properly interpreted as one of retaliation under § 2615(a)(2). See Bachelder v. Am. West Airlines, Inc., 259 F.3d 1112, 1124 (9th Cir. 2001)(reasoning that § 2615(a)(1) deals with the interference of an employee's exercise of FMLA rights rather than with an employer's retaliation for the exercise of those rights). Because the intent of an employer is material in FMLA interference claims, the McDonnell Douglas analysis applies. See Potenza v. City

of New York, 365 F.3d 165, 167 (2d Cir. 2004).

Viewing the facts in the light most favorable to Walker, the court finds that Walker has established a prima facie case of retaliation. That is: 1) Walker's leave was taken in accordance with the FMLA; 2) she was qualified for the program development position; 3) she was laid off and therefore suffered an adverse employment action; and, 4) retaliatory intent can be inferred because the layoff occurred just weeks after the end of her medical leave. See id.

Indeed, under 29 C.F.R. § 825.220(c), which was promulgated pursuant to the FMLA, an employer cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions. Here, Access readily concedes that it decided to layoff Walker and retain Denson, in part, because Denson had been working in the position throughout Walker's leave and was well-acquainted with existing projects that needed to be completed by the end of June 2001. Based on that concession, a jury could find that Access used Walker's leave as a negative factor in its decision to lay her off. That is, the record reflects a factual dispute as to whether Access would have laid off Walker and retained Denson had Walker not taken the medical leave. While the court notes that under § 2614(b)(1) of

the FMLA an employer may deny restoration to an employee, inter alia, when "necessary to prevent substantial and grievous economic injury to the operations of the employer," the court finds that Walker has nonetheless established a question of fact that must be decided by a jury. Accordingly, summary judgment must be denied in favor of Walker on this issue.

IV. Negligent Infliction of Emotional Distress

Finally, Access moves for summary judgment on Walker's claim of negligent infliction of emotional distress ("NIED"). Walker alleges that she suffered emotional distress, embarrassment, humiliation, and anxiety as a result of her layoff.

In the employment context, NIED arises only where it is based upon the defendant's unreasonable conduct in the termination process. See Parsons v. United Techs. Corp., 243 Conn. 66, 89 (1997). The dispositive issue is whether the employer's conduct "was sufficiently wrongful that [it] should have realized that its conduct involved an unreasonable risk of causing emotional distress," which, if caused, could result in illness or bodily harm. Perodeau v. City of Hartford, 259 Conn. 729, 751 (2002)(internal quotes and citation omitted). However, the mere termination of employment, even where it is

wrongful, is not by itself sufficient to sustain a claim for negligent infliction of emotional distress. See Parsons, 243 Conn. at 88-89. In other words, firing an employee does not transgress the bounds of socially tolerable behavior.

Here, Walker points to four specific occurrences which she argues Access should have known were likely to cause her an unreasonable risk of emotional distress: 1) Connor informing Walker that her position as Director of Economic Development had been eliminated and that her duties would be given to Denson, a younger employee; 2) Connor's November 28, 2000, letter to Walker confirming that the economic development position had been eliminated; 3) Connor's statement to Gregonis that she did not believe Walker was actually sick and that she had gone on medical leave merely for financial purposes; and 4) Denson's continued employment at Access.

Even when taken in the light most favorable to her, the facts that Walker puts forth would not allow a reasonable jury to infer that Access acted egregiously. The first two incidents are wholly acts of termination which, despite Walker's claim that they were not only unwarranted but in fact unlawful, are not cognizable in an NIED claim. See id. The latter two incidents -- Connor's statement to Gregonis and

Denson's continued employment at Access -- are also not actionable as NIED claims because they do not deal with Access's treatment of or conduct towards Walker. In any event, it is clear that none of the incidents that Walker points to were extreme or outrageous. See, e.g., Miner v. Town of Cheshire, 126 F. Supp.2d 184, 197 (D. Conn. 2000) (reasoning that because emotional distress in the workplace is not uncommon, courts do not lightly intervene to impair the exercise of management discretion and have thus attempted to keep a tight rein on the expansion of NIED claims in the employment context, limiting them to instances of unreasonable conduct) (citing cases). Accordingly, summary judgment is granted in favor of Access on this claim as well.

CONCLUSION

For the foregoing reasons, defendant's motion for summary judgment [dkt. # 22.] is GRANTED as to the plaintiff's age discrimination, retaliation for an age discrimination complaint, and negligent infliction of emotional distress claims, but is DENIED as to plaintiff's FMLA retaliation claim.

So ordered this ___ day of August, 2004, at Bridgeport, Connecticut.

Alan H. Nevas
Senior United States District

Judge