

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Civil Action: 2:16-cv-00225-CB

Plaintiff,

v.

SCOTT MEDICAL HEALTH CENTER,
P.C.,

JURY TRIAL DEMANDED

Defendant.

**DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO FED.R.CIV.P. 12(b)(1) AND (6)**

Defendant Scott Medical Health Center, P.C. submits the following brief in support of its Motion to Dismiss:

I. FACTUAL ALLEGATIONS

More than 30 days prior to the filing of the Complaint, Libby Eber, Brittany Fullard, Allyssa Griffie, Donna Mackie, and Kaitlyn Wieczorek, former employees of Defendant, filed Charges of Discrimination (“Charges”) with the Equal Employment Opportunity Commission (“EEOC” or “Commission”) alleging violations of Title VII by Defendant (Complaint, ¶ 6).

The Charges by Fullard, Griffie, Mackie, and Wieczorek were filed on August 26, 2013. True and correct copies of these Charges, which form the basis for the claim herein, are attached as Exhibits 1-4, respectively. The Charge by Eber was filed on May 30, 2014. A true and correct copy of this Charge, which also forms the basis of the claim herein is attached as Exhibit 5.

The Charges allege that these five female former employees were sexually harassed by their supervisor, Robert McClendon, a male, thereby creating a hostile environment leading to either a discharge when they refused Mr. McClendon's sexual advances or a constructive discharge of each of the Plaintiffs due to their gender. Griffie also alleged that she was harassed by McClendon due to a disability in violation of the Americans with Disabilities Act.

On July 22, 2015, the Commission issued to Defendant a Letter of Determination finding reasonable cause to believe that Title VII was violated (Complaint, ¶ 7). True and correct copies of the Letters of Determination issued on that date as to the five Charging Parties, which form the basis of the claim herein, are attached hereto as Exhibits 6-10.

The Letters of Determination found probable cause to believe that Title VII was violated by McClendon's sexual harassment of the Charging Parties, which created a sexually hostile environment leading to the constructive discharge or discriminatory or retaliatory discharge of the Charging Parties (Exhibits 6-10).

The Letters of Determination also claimed reasonable cause to believe that Title VII was violated by McClendon's harassment and constructive discharge of a male employee, Dale Baxley, because Baxley was a homosexual (Exhibits 6-10). Baxley never filed a Charge (Declaration of Dr. Gary Hieronimus (Exhibit 11); also, the Complaint does not allege that he filed a Charge).

Baxley was employed for a few weeks by Defendant - from the period of about mid-July 2013 until he resigned on August 19, 2013 (Complaint, ¶ 11 (d)-(g)). Prior to late July 2015, Defendant was totally unaware that the Commission was investigating allegations that Defendant had violated Title VII by harassing and constructively discharging Baxley because he was a homosexual (Hieronimus Declaration, Exhibit 11).

Defendant was never asked to present any evidence to defend itself against the Baxley sexual orientation allegations prior to being informed of the probable cause Determination (Hieronimus Declaration, Exhibit 11). Defendant was totally blind-sided by the Baxley sexual orientation accusations, which it reasonably had no cause to believe would be investigated by the Commission as part of its investigation into allegations raised by the female Charging Parties, who had not alleged discrimination based upon sexual orientation (Exhibits 1-10; Declaration Hieronimus Declaration, Exhibit 11). Baxley had resigned almost two years before the EEOC informed Defendant that it had investigated allegations of sexual orientation discrimination against Baxley and had found probable cause to believe that a violation had occurred.

On March 1, 2016, the instant Complaint was filed by the Commission, alleging that Baxley was harassed and constructively discharged by Defendant due to his sexual orientation.

II. STANDARD OF REVIEW

To survive a Motion to Dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (U.S. 2009)(quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) (internal quotations omitted). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. (citing *Twombly*, 550 U.S. at 556).

The Third Circuit has further explained that a district court, in applying the *Twombly/Iqbal* standards, should first separate the factual and legal elements of a claim. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). While the court must accept all well-

pledged facts as true, it may disregard all legal conclusions. *Id.* at 210-11. The court must then determine whether such facts "show" an entitlement to relief. *Id.* at 211. A motion to dismiss should be granted pursuant to Rule 12(b)(6) if the factual allegations are insufficient to "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

In deciding a Rule 12(b)(6) motion to dismiss, the Court may consider "only the allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." *Lum v. Bank of Am.*, 361 F.3d 217, 222 n. 3 (3d Cir. 2004). A document forms the basis of a claim if it is "integral to or explicitly relied upon in the complaint." *In re Rockefeller Ctr. Props., Inc. Sec. Litig.*, 184 F.3d 280, 287 (3d Cir. 1999).

III. ARGUMENT

A. The scope of the EEOC's investigatory and relief-seeking authority is limited to what could reasonably be expected to grow out of an individual's Charge.

Title VII "sets forth an integrated, multistep enforcement procedure' that enables the Commission to detect and remedy instances of discrimination." *EEOC v. Shell Oil Co.*, 466 U.S. 54, 62 (1984) (quoting *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 359 (1977)). The Commission's enforcement responsibilities are triggered by the filing of a specific sworn Charge. *Id.*

Under Title VII, a plaintiff has 180)days to file a Charge. 42 U.S.C. § 2000e-5(e)(1). Where there is a work sharing agreement between the EEOC and the local fair employment practices agency, as there is between the EEOC and the PHRC, the statutory filing period is enlarged to 300 days. *Id.*; See also 29 C.F.R. § 1626.7; *Colgan v. Fisher Scientific Company*, 935 F.2d 1407, 1414-1415 (3rd Cir. 1991). This filing is a prerequisite to a civil suit under Title VII. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47, 39 L. Ed. 2d 147, 94 S. Ct. 1011 (1974). The

EEOC must serve notice of the Charge on the employer within ten days of filing. 42 U.S.C. § 2000e-5(b).

Title VII obligates the Commission to investigate the Charge to determine whether there is "reasonable cause to believe that the charge is true." 42 U.S.C. § 2000e-5(b). If it finds no such reasonable cause, the Commission must dismiss the Charge. If it does find reasonable cause, the Commission shall "endeavor to eliminate [the] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." *Id.* If attempts at voluntary resolution fail, the Commission may bring an action against the employer. § 2000e-5(f)(1).

Thus, the EEOC is authorized to bring civil suits to enforce Title VII. *Occidental Life Ins. Co. v. E.E.O.C.*, 432 U.S. 355, 358-59 (1977). However, "When the EEOC sues in its own name, it may litigate only those claims which have been subjected to the complete administrative processing required by Title VII. *EEOC v. E. Hills Ford Sales, Inc.*, 445 F. Supp. 985, 987 (W.D. Pa. 1978). Accordingly, "Before it can initiate a civil suit, Title VII requires the EEOC to: (1) receive a charge from an individual and notify the employer of the charge, (2) investigate that charge and related charges, (3) determine that "reasonable cause" exists to believe that discrimination occurred, and (4) attempt conciliation of all charges against the employer. See 42 U.S.C. § 2000e-5(b)." *EEOC v. U.S. Steel*, 2012 U.S. Dist. LEXIS 101872 at * 32-3 (W.D. Pa. 2012). Accordingly, every step in the statutory scheme, including the filing of a Charge, notice, investigation, determination, and conciliation is a condition precedent for the filing of suit. *Id* at *33; *E.E.O.C. v. Allegheny Airlines*, 436 F. Supp. 1300, 1304 (W.D. Pa. 1977) (citing *EEOC v. E. I. Dupont de Nemours and Co.*, 373 F. Supp. 1321 (D. Del. 1974)).

The EEOC's failure to comply with these pre-suit obligations warrants dismissal of a Complaint. As noted by this Court:

Even where the EEOC has fulfilled its statutory enforcement obligations on paper, some courts have still undertaken an analysis into the quality and sufficiency of the agency's pre-suit activities. For example, if the agency's obligatory pre-suit activities failed to put the employer on notice about the national scope of the contemplated litigation, the scope of the EEOC's claims may be limited. *See EEOC v. Dillard's Inc.*, No. 08-CV-1780, 2011 U.S. Dist. LEXIS 76206, 2011 WL 2784516, at *8 (S.D. Cal. July 14, 2011) (unpublished) (EEOC's failure to inquire as to employees located in different stores foreclosed recovery on behalf of a nationwide class despite pre-suit communications to defendant referring to "similarly-situated" individuals); *EEOC v. Jillian's of Indianapolis, IN, Inc.*, 279 F. Supp. 2d 974, 981-82 (S.D. Ind. 2003) (district court refused to allow the EEOC to expand its lawsuit to include a nationwide class following discovery on its original complaint and rejected the EEOC's argument that defendant knew or should have known it was subject to a nationwide class action as a result of the discovery requests); *EEOC v. Outback Steak House, Inc.*, 520 F. Supp. 2d 1250, 1263-66 (D. Colo. 2007) (local focus of EEOC's pre-suit investigations failed to put defendant on notice about the national scope of the agency's forthcoming litigation despite inquiries about the company's national employment policies).

U.S. Steel, 2012 U.S. Dist. at *28-9.

Once the EEOC begins an investigation, however, it is not required to ignore facts that support additional claims of discrimination if it uncovers such evidence during the course of a reasonable investigation of the Charge. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 297 (3d Cir. 2010) *citing: Gen. Tel. Co. of the N.W., Inc. v. EEOC*, 446 U.S. 318, 331, 100 S. Ct. 1698, 64 L. Ed. 2d 319 (1980) ("Any violations that the EEOC ascertains in the course of a reasonable investigation of the charging party's complaint are actionable."); *EEOC v. Cambridge Tile Mfg. Co.*, 590 F.2d 205, 206 (6th Cir. 1979)." As earlier found by the Third Circuit, the parameters of a Complaint in District Court are defined by the "scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." *Ostapowicz v. Johnson Bronze Co.*, 541 F.2d 394, 398-99 (3d Cir 1976).

In *Kronos, supra*, the Third Circuit analyzed how far the EEOC could reasonably expand a Charge through a "reasonable investigation," albeit in the context of what documents the EEOC could subpoena as part of its investigation of a Charge. The Charge therein was filed by an individual who claimed that she was not hired due to her disability. *Id.* The EEOC notified the

employer that it was expanding its investigation to include the issue of disability with respect to use of assessment tests in the hiring process. *Id.* It later notified the employer that it was expanding its investigation to include the issue of disability *and race* with respect to use of assessment tests in the hiring process. *Id.*, at 293.

The Court noted that the EEOC was entitled to access evidence that was relevant to the Charge under investigation and that the concept of relevancy was to be construed broadly when a Charge is at its investigatory stage. *Id.*, at 296, citing *EEOC v. Franklin & Marshall Coll.*, 775 F. 2d 110, 116 (3d Cir. 1985). Thus, it reversed the District Court Judge's refusal to enforce the subpoena as to a number of items, including, for instance, its limitation of information as to testing results to only certain job categories. *Id.*

However, the Court then reviewed the EEOC's request for "documents discussing, analyzing or measuring potential adverse impact . . . [on the basis of] race." *Id.* at 300. The EEOC claimed that it was entitled to this information as part of a properly expanded, reasonable investigation of the Charge. *Id.* The EEOC argued that it expanded its investigation to include race discrimination, because during the investigation it uncovered evidence from a Kronos employee that suggested that minority applicants performed worse than non-minorities on the assessment tests, and it also discovered in its database charges against the employer alleging race discrimination in hiring. *Id.* According to the EEOC, this constituted evidence that the tests might be a potential "root source of discrimination" against people with disabilities and African Americans, and, therefore, a legitimate basis for it to expand its investigation into discrimination based on race. *Id.* at 301.

The Third Circuit concluded that while the EEOC is not required to ignore facts it uncovers in the course of a reasonable investigation of a charging party's Charge, that standard

did not justify the expansion of the investigation requested by the EEOC. *Id.* It noted that the charging party was a disabled white female, who alleged *disability discrimination*. *Id.* It then specifically found, “*We are unprepared to hold that a reasonable investigation of that charge can be extended to include an investigation of race discrimination.*” *Id.* at 301 (emphasis added).

Significantly, the Court concluded:

We acknowledge that the EEOC's investigatory powers are expansive; however, the EEOC is still not permitted to "wander [] into wholly unrelated areas." *See Cambridge Tile*, 590 F.2d at 206. *In this case, the EEOC's inquiry into discrimination based on race is wholly unrelated to Sandy's charge and does not fall within the ambit of a reasonable expansion.*

Id. at 302 (emphasis added).

Accordingly, the Court affirmed the District Court's judgment to the extent that it declined to enforce the portion of the EEOC's subpoena requesting information related to potential discrimination based on race where the Charge was based on disability. *Id.*

Similarly, in the case of *Brown v. Envoy Air, Inc.*, 2014 U.S. Dist. LEXIS 165142 (W.Dist. Pa. 2014), the Charge alleged discrimination based upon religion. This Court dismissed the Complaint's allegation of racial discrimination because such allegation was beyond the scope of the EEOC investigation which could reasonably be expected to grow out of the Plaintiff's Charge. *Id.* at 8-9. The Court also dismissed the Complaint with prejudice, as the Plaintiff's allegedly racially motivated termination occurred more than 300 days beforehand. *Id.*

In analyzing the parameters of EEOC authority to expand its investigation beyond the allegations in the Charge, the *Kronos* Court cited with approval Sixth Circuit opinions: *EEOC v. Cambridge Tile Mfg. Co.*, 590 F.2d 205, 206 (6th Cir. 1979); *EEOC v. Ford Motor Credit Co.*, 26 F.3d 44, 47 (6th Cir. 1994); *EEOC v. Roadway Express, Inc.*, 261 F.3d 634, 642 (6th Cir.

2001). Another Sixth Circuit decision on this subject, *EEOC v. Keko Industries, Inc.*, 748 F. 2d 1097 (6th Cir. 1984), is cited in a case analyzing the EEOC's investigatory authority from this Court, *EEOC v. U.S. Steel Corp.*, 2013 U.S. Dist. LEXIS 22748 (W.D. Pa. 2013). The rationale for these decisions and underlying precedent is the case of *EEOC v. Bailey Co.*, 563 F.2d 439 (6th Cir. 1977), which is highly informative and persuasive.

In *Bailey*, Wade, a white female, originally filed a Charge of sex discrimination and then amended her Charge to include an allegation of race discrimination against black females. The EEOC brought a lawsuit alleging racial and religious discrimination. The Court relied on Sixth Circuit precedent that a Complaint was "limited to the scope of the EEOC investigation reasonably expected to grow out of the charge of discrimination. *Id.* at 446.

The Court concluded that allegations of religious discrimination could not reasonably be expected to grow out of Mrs. Wade's charge and dismissed those allegations. According to the Court, to allow the EEOC, as it did in that case, to issue a reasonable cause determination, to conciliate, and to sue on allegations of religious discrimination unrelated to the private party's charge of sex discrimination would "result in undue violence to the legal process that Congress established to achieve equal employment opportunities in this country." *Id.* at 447-48.

The Court pointed out that when evidence of discrimination, of a kind other than that raised by a Charge filed by an individual party and unrelated to the individual party, comes to the EEOC's attention during the course of an investigation of the private party's Charge, the procedure to be followed is for the filing of a Charge by a member of the EEOC and for a full EEOC investigation of that Charge. *Id.* In that way, the employer is afforded notice of the allegation, an opportunity to participate in a complete investigation of such allegation, and an opportunity to participate in meaningful conciliation discussions should reasonable cause be

found following the EEOC investigation. *Id.*, at 448. Title VII, 42 U.S.C. § 2000e-5(b), provides for the filing of a Charge by a member of the EEOC. Under such a filing, an employer is not stripped of formal notice of the Charge and of the opportunity to respond to the EEOC's investigation into employment practices with respect to allegations of discrimination unrelated to the individual party's charge. In addition, the filing of a charge will permit settlement discussions to take place pursuant to 29 C.F.R. § 1601.19a after a preliminary investigation but before any finding of reasonable cause. *Id.* at 448.

In addition, the Court noted that Congress intended that conciliation be the preferred method for eradicating employment discrimination. *Id.* Further, the EEOC's duty to attempt conciliation is “thus ‘among its most essential functions,’ *EEOC v. Raymond Metal Products Co.*, 530 F.2d 590, 596 (4th Cir. 1976), and the ‘primary goal’ of Title VII is ‘the securing of voluntary compliance with the law.’” *Id* at 449.

The Court then reasoned that if conciliation was to work properly, Charges must be fully investigated after the employer receives notice in a Charge alleging unlawful discriminatory employment practices. *Id.*, at 449. According to the Court, “The requirement that a member of the EEOC file a charge when facts suggesting unlawful discrimination are discovered that are unrelated to the individual party's charge does serve the purposes of treating the employer fairly and forcing the employer and the EEOC to focus attention during investigation on the facts of such possible discrimination and thereby does serve the goal of obtaining voluntary compliance with Title VII.” *Id.*, at 449.

Finally, the Court reasoned that its decision was supported by the concern expressed in Congress that due process safeguards be built into the statutory scheme of Title VII. *Id.* at 449, citing Remarks of Congressman Quie, House Debate on H.R. 1746, 92d Cong., 1st Sess., 117

Cong. Rec. 31962 (Sept. 15, 1971); S. Rep. No. 92-415, 92d Cong., 1st Sess. 25 (1971). The Court concluded:

Although neither the statutory language nor the legislative history directly address the question before us, it is clear that the requirement in § 703 of Title VII, 42 U.S.C. § 2000e-2, of timely notice to an employer of a charge filed with the EEOC alleging employment discrimination embodies due process guarantees. *New Orleans Public Service, Inc. v. Brown*, 369 F. Supp. 702, 710 (E.D. La. 1974). If an EEOC investigation of an employer uncovers possible unlawful discrimination of a kind not raised by the charging party and not affecting that party, then the employer should be given notice if the EEOC intends to hold the employer accountable before the EEOC and in court.

Id. at 449.

The Court then rejected the EEOC's argument that it was sufficient for the employer to have received notice and opportunity to comment at the time the EEOC issued its reasonable cause determination and during conciliation rather than before the issuance of the reasonable cause determination. *Id.* The Court noted its concern with the legislative judgment of due process incorporated into the statutory scheme of Title VII, which indicated a concern for fair treatment of employers. *Id.* at 450.

Under the EEOC's theory, the Court explained, investigation of one form of employment discrimination can always be said to have reasonably been expected to grow out of a charge of another form of employment discrimination. *Id.* The Court rejected that theory, "because for the purposes of Title VII, forms of employment discrimination involving race, religion, sex, and national origin are not so related. *Id.* at 451.

B. Allegations of sexual orientation violations in a Complaint alleging male to male harassment and discrimination violations involving a party not named in a Charge are beyond the scope of an EEOC investigation reasonably expected to grow out of a Charge alleging male to female sexual harassment and discrimination.

The above cases and analysis shows that under Third Circuit jurisprudence, although the EEOC has authority to investigate allegations of violations of Title VII beyond the four corners

of the Charge, the scope is limited to that which could be reasonably expected to grow out of the Charge. An investigation into unalleged discriminatory acts with an unlawful motive different from the unlawful motive alleged in the Charge is considered to be beyond the scope of an EEOC investigation reasonably expected to grow out of a Charge, particularly when the investigation is focused on an individual who was never named in a Charge or amended Charge. Thus, for instance, an investigation into an unalleged unlawful racial motive is beyond what reasonably could be expected when the Charge only alleged an unlawful religious motive, *Brown v. Envoy Air, supra*; and an investigation into an unalleged unlawful racial motive is beyond what reasonably could be expected when the Charge only alleged an unlawful anti-disability motive.

In the instant case, the EEOC Charges by the five females allege violations by a male supervisor who allegedly had sexual desires for these females, inappropriately touched them out of such desires, made inappropriate remarks concerning their bodies, conditioned certain benefits on the grant of sexual favors, and thereby created a sexually hostile environment. In other words, the male supervisor allegedly had sexual desires toward the women and violated Title VII when he unlawfully acted upon those sexual desires.

The Complaint filed by the EEOC, on the other hand, alleges that this male supervisor harassed a male, homosexual employee, Dale Baxley, not out of a sexual desire toward males or females, but rather because of the male supervisor's antipathy toward homosexuals. His anti-homosexual remarks to Baxley purportedly resulted in Baxley's constructive discharge.

Accordingly, these are two different alleged discriminatory motivations and actions. As a consequence, it cannot be found that the investigation into a hostile environment and constructive discharge resulting from an anti-homosexual motivation could be reasonably

expected from an investigation into allegations of motivation of sexual desire for the opposite sex with inappropriate lustful touching and remarks – particularly when the person alleged to be harmed is not even named in the Charge.

Even more significantly, a sexual orientation investigation cannot be reasonably expected to arise from a male to female sexual harassment and discrimination claim when the EEOC never before filed a Complaint based upon sexual orientation in its over 60 year history and where sexual orientation is not one of the protected classes under Title VII. As touted in the EEOC's own press release to the world on the day it filed the Complaint, "The U.S. Equal Employment Opportunity Commission (EEOC) announced today that it has filed its first two sex discrimination cases based on sexual orientation." A true and correct copy of this public record is attached hereto as Exhibit 12 and can be found at the EEOC's website at: <https://www.eeoc.gov/eeoc/newsroom/release/3-1-16.cfm>. .

Accordingly, the Complaint should be dismissed on this basis alone. *Kronos, supra;*
Brown v. Envoy Air, supra.

- C. **The EEOC's failure to act on a Charge alleging sexual orientation within 300 days of the alleged discriminatory acts and the EEOC's failure to promptly notify Defendant that it was investigating allegations of sexual orientation and ask Defendant for its position with respect to those allegations prior to making its probable cause Determination warrant dismissal of the Complaint for failure of the duty to file a Charge within 300 days of the alleged violation and for fundamental unfairness and lack of due process.**

Moreover, Defendant had no knowledge that the EEOC was investigating allegations of sexual orientation discrimination until it was informed by the EEOC in late July 2015, approximately two years after Baxley quit his job, that it had found probable cause of a violation with respect to Baxley based upon sexual orientation. Thus, it issued its Letters of Determination prior to giving Defendant any opportunity to respond to those allegations and without the five

female Charging Parties, Baxley, the EEOC, or anyone else naming Baxley in a Charge or alleging a sexual orientation violation.

The first question, then, is whether Title VII's 300 day statute of limitations for filing a Charge is applicable to the EEOC or whether the EEOC is subject to some other statute of limitations or none at all. As noted above in *Bailey, supra*, under the statutory scheme, Congress embedded fair notice to the employer and a fair opportunity to the employer to be heard before the EEOC makes a Determination of probable cause against an employer by establishing the 180/300 day statute of limitations for the filing of the Charge and by empowering the EEOC to issue its own Charge if its investigation uncovered evidence of violations not alleged in the Charge.

In the instant case, there was never a Charge filed on Baxley's behalf, and it was one year and 11 months from the time of the alleged violations until the EEOC notified Defendant that it had investigated sexual orientation claims of an individual not named in the Charge and had found probable cause of a violation. Even assuming, *arguendo*, that the EEOC can proceed to Complaint on allegations not set forth in a Charge, the notification to the employer in this case was well beyond the 300 day requirement for the filing of a Charge from the date of the discriminatory act. Suppose, then, that during the investigation the EEOC found evidence that McClendon sexually harassed and constructively discharged other female employees five years ago in a similar fashion as he did to the five Plaintiffs. Would the EEOC have the right to notify Defendant five years later that it had investigated and found probable cause of other sexual discrimination five years earlier? To grant the EEOC such a right would be fundamentally unfair to the employer and contrary to the legislative intent of fair notice to an employer of the allegations of violative conduct that were being investigated. Under the principles set forth in

Bailey, fundamental fairness and the legislative due process inherent in Title VII warrant notification of an employer within 300 days of the alleged discriminatory acts. In the instant case, the simultaneous notification to the employer of the EEOC's investigation of unalleged violations and a probable cause finding almost two years after the resignation of the former employee violated the requirement for filing of a Charge within 300 days and notification within 10 days thereafter, as well as fundamental fairness and due process rights set forth in Title VII for the filing of a Charge, notification to the employer, an amended Charge filed by the Charging Party or the EEOC if evidence of possible additional violations come to the attention of the EEOC during its investigation, an EEOC Determination, conciliation efforts by the EEOC, and then, as a last resort, a Complaint. As noted in *Bailey*, the failure of the EEOC to provide the notice of the investigation prior to the probable cause Determination, also undermines the conciliation process, the legislatively favored method of resolution.

The importance behind the 180/300 day time limitation for the filing of a Charge and notice to the employer is emphasized and relied upon by the Supreme Court in the case of *Occidental Life Ins. Co. v. EEOC*, 422 U.S. 355 (1977). The issue before the Court was the time limitation, if any, that the EEOC had after the filing of the Charge to file suit in court. In finding that there was no time limitation, the Supreme Court relied on the fact that Title VII provided for filing of the Charge within 180 days of the allegedly violative act and prompt notice to the employer, noting:

Congress did express concern for the need of time limitations in the fair operation of the Act, but that concern was directed entirely to the initial filing of a charge with the EEOC and prompt notification thereafter to the alleged violator. The bills passed in both the House and the Senate contained short time periods within which charges were to be filed with the EEOC and notice given to the employer.

Id., at 371.

The Court further stressed that prompt notice to the employer was vital for “fundamental fairness, asserting:

The absence of inflexible time limitations on the bringing of lawsuits will not, as the company asserts, deprive defendants in Title VII civil actions of fundamental fairness or subject them to the surprise and prejudice that can result from the prosecution of stale claims. *Unlike the litigant in a private action who may first learn of the cause against him upon service of the complaint, the Title VII defendant is alerted to the possibility of an enforcement suit within 10 days after a charge has been filed. This prompt notice serves, as Congress intended, to give him an opportunity to gather and preserve evidence in anticipation of a court action.*

Id. at 372 (emphasis added).

In the instant case, no Charge was filed on behalf of Baxley, and no notice of an investigation into Baxley’s allegations was given until almost two years from the time he allegedly was constructively discharged, when Defendant was notified of a probable cause finding regarding Baxley in July 2015. Thus, Defendant was denied fundamental fairness, as it did not receive prompt notice, and it was thereby not given an opportunity to gather and preserve evidence in anticipation of potential court action.

Baxley could have filed a Charge on his own behalf or the EEOC could have filed a Charge on his behalf. The EEOC and he would have had to file such a Charge within 300 days of his August 2013 resignation. The EEOC should not be allowed to avoid that requirement by the notification of the investigation and probable cause finding approximately two years after Baxley’s resignation. *Bailey, supra; EEOC v. FAPS, Inc.* 2014 U.S. LEXIS 136006, at *70 (D.N.J. 2014) ("Nothing in the text of Section 706 or 707 suggests that the EEOC can recover for individuals whose claims are otherwise time-barred. If Congress intended to make an exception for the EEOC to revive stale claims under Sections 706 and 707, it should have said so. *EEOC v. U.S. Steel*, 2012 U.S. Dist. LEXIS 101872 at *16-17 (quoting *Freeman*, 2010 U.S. Dist. LEXIS 41336, 2010 WL 1728847, at *4)).

For these reasons, as well, the Complaint should be dismissed.

D. The Complaint should be dismissed for failure to state a cause of action, because Title VII does not prohibit discrimination based upon sexual orientation.

Discrimination based upon sexual orientation in the workplace is abhorrent. Nevertheless, and although Title VII prohibits discrimination based upon an individual's race, religion, color, sex, or national origin, "Title VII does not prohibit discrimination based on sexual orientation. Congress has repeatedly rejected legislation that would have extended Title VII to cover sexual orientation." *Prowel v. Wise Bus. Forms, Inc.*, 579 F.3d 285, 289 (3d Cir. 2009) (quoting from *Bibby v. Philadelphia Coca Cola Bottling Co.*, 260 F.3d 257 (3d Cir. 2001)).

In *Prowel*, the plaintiff alleged that he was a homosexual and described himself as effeminate, not conforming to how blue collar, male workers at the employer's plant conducted themselves. *Id.* He had a high voice, did not curse, and walked and carried himself in an effeminate manner. *Id.* Prowel was harassed by statements referring to him as a "princess" and statements about how "Rosebud" was dressed or walked. *Id.* The Court found that such facts could constitute evidence of gender stereotyping harassment, *i.e.* harassment because he did not conform to how the employer believed a man should look, speak, and act; rather than harassment based upon sexual orientation. *Id.* Because there was also evidence that the record was replete with evidence of harassment based upon sexual orientation, which was not actionable, the Court found that the case should be decided by the jury and not via a motion for summary judgment. *Id.*

In the instant case, the EEOC alleges an amalgam of sexual orientation and sex stereotyping (Complaint, ¶11(h)). It argues, contrary to *Prowel* and *Bibby*, that sexual orientation "necessarily entails treating an employee less favorably because of his sex" (Complaint, ¶11(h)).

Thus, the Complaint is really a sexual orientation Complaint that the EEOC, in conclusory statements, tries to argue is a gender discrimination case. But as essentially admitted even in its conclusory statements and as admitted in its own press release, the Complaint herein was one of the first two sexual orientation Complaints filed by the EEOC (Exhibit 12).

Indeed, the facts alleged in the Complaint do not claim that Baxley acted in an effeminate manner such as those claimed in *Prowel*. Rather, the facts allege that he was subjected to crude remarks similar to those suffered by the plaintiff in *Bibby*. The case is also similar to another case decided in an unpublished Opinion of the Third Circuit, *Pagan v. Gonzalez*, 430 F. Appx. 170 (3d Cir. 2011 Unpublished). In *Pagan*, the female plaintiff alleged that she was subjected to comments about her sexual orientation, including being called a “dyke,” and a “lesbian,” and had negative references made to her lifestyle. See District Court opinion at 741 F. Supp. 2d 687, 694 (D.N.J.2010). The plaintiff attempted to characterize her allegations as discrimination based upon her sex rather than sexual orientation, claiming that she did not comply with a gender stereotype. *Id.* The Third Circuit upheld the District Court’s dismissal of the Complaint, finding that the offensive comments related to the plaintiff’s sexual orientation and noting the absence of any evidence that the discrimination was based upon the plaintiff acting in a masculine manner. *Pagan*, 430 Fed. App. at 172.

The law in this area was summarized well by Judge Gibson of this Court in the case of *Johnston v. Univ.of Pittsburgh*, 97 F. Supp. 657, 679-80, wherein Judge Gibson rejected the plaintiff’s claim of sex stereotyping, noting that the plaintiff had not alleged that he was discriminated against because of the way he looked, acted, or spoke/

The facts alleged in the Complaint do not allege that Baxley acted in an effeminate manner, that McClendon had any sexual desires for Baxley, that McClendon displayed any

hostility to males being in the workplace, or that Baxley was being discriminated against because of the way he looked, acted, or spoke. Rather, the Complaint alleges facts upon which the Courts in this jurisdiction have recognized constitute a sexual orientation claim. Sexual orientation claims are not actionable under Title VII or the PHRA, and the Complaint should be dismissed for failure to state a claim. *Prowel, supra; Bibby, supra; Pagan, supra; Johnston, supra.*

IV. CONCLUSION

For the foregoing reasons, pursuant to Rule 12(b)(1) and (6), respectfully requests that this Honorable Court enter an Order granting its Motion to Dismiss the Complaint, with prejudice.

Respectfully submitted,

/s/ Charles H. Saul

Charles H. Saul, Esquire

Pa I.D. No. 19938

MARGOLIS EDELSTEIN

525 William Penn Place – Suite 3300

Pittsburgh, PA 15219

P: 412-355-4985

F: 412-642-2380

csaul@margolisedelstein.com

Counsel for Defendant

EEOC FORM 131 (11/09)

U.S. Equal Employment Opportunity Commission

Chief Executive Officer
 Human Resources Department
SCOTT MEDICAL CENTER
 2275 Swallow Hill Road
 Building 2600
 Pittsburgh, PA 15220

PERSON FILING CHARGE

Brittany Fullard

THIS PERSON (check one or both)

 Claims To Be Aggrieved Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

533-2013-01350

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

- Title VII of the Civil Rights Act (Title VII) The Equal Pay Act (EPA) The Americans with Disabilities Act (ADA)
- The Age Discrimination in Employment Act (ADEA) The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1. No action is required by you at this time.
2. Please call the EEOC Representative listed below concerning the further handling of this charge.
3. Please provide by 02-DEC-13 a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by to
 If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Frank E. Rodia,
 Intake Supervisor

EEOC Representative

Telephone (412) 395-5865

Pittsburgh Area Office
 1000 Liberty Avenue
 Room 1112
 Pittsburgh, PA 15222
 Fax: (412) 395-5749

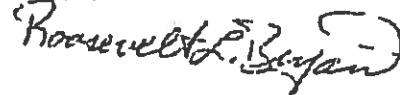
Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

- Race Color Sex Religion National Origin Age Disability Retaliation Genetic Information Other

See enclosed copy of charge of discrimination.

If you are not the person handling this matter,
 please contact the EEOC within seven (7)
 days, with the correct person's name and
 address who will be the contact person.

Date	Name / Title of Authorized Official	Signature
November 7, 2013	Roosevelt L. Bryant, Acting Director	

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ALYSSA GRIFFIE,
DONNA MACKIE,
KAITLYN WIECZOREK, and
BRITTANY FULLARD,
Complainants, : EEOC Charge No. 533-2013-01350
v. : Pennsylvania Commission on
Human Relations Docket No.
SCOTT MEDICAL HEALTH CENTER:
Respondent :

CHARGE OF DISCRIMINATION

1. Complainant Allyssa Griffie, resides at:

156 ½ Middle Way
Pittsburgh, PA 15210

2. Complainant Donna Mackie resides at:

715 Mercer Street, Apt. 415
Pittsburgh, PA 15219

3. Complainant Kaitlyn Wieczorek resides at:

4735 Hatfield Street
Pittsburgh, PA 15201

4. Complainant Brittany Fullard resides at:

120 Harriet Street
Rankin, PA 15104

5. The Respondent is Scott Medical Center, P.C. at the following address:

2275 Swallow Hill Road, Bldg. 900
Pittsburgh, PA 152220

6. Complainants Griffie, Mackie, Wieczorek and Fullard all worked as telephone
appointment setters for Respondent Scott Medical Center.

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7. Griffie, Mackie and Wleczorek started working at Scott Medical Center on May 6, 2013. Fullard began on June 17, 2013.
8. Complainants' direct supervisor was Call Center Director Robert McClendon.
9. McClendon subjected all Complainants to sexual harassment and unwanted touching so frequently and severely that it created a hostile and offensive work environment and resulted in adverse employment decisions being taken against them.
10. McClendon also harassed Complainant Griffie about her disability so frequently and severely that it created a hostile and offensive work environment and resulted in an adverse employment decision being taken against her.

Complainant Griffie

11. McClendon's sexual harassment of Griffie mainly focused on her weight and his stereotypical views of femininity. He called her "fat" and referred to her in the office as the "fat lady." Everyone in the office, including all Complainants, heard McClendon call Griffie "fat" and refer to her as the "fat lady."
12. McClendon gave Griffie a brochure from a weight loss program offered by Scott Medical Center. He told Griffie that she had to join or she could not work there anymore. The program cost \$99 per month. McClendon told Griffie that he signed her paychecks so he knew that she could afford the program and that her weight was affecting him. Griffie said that she did not like it when he spoke to her that way. McClendon responded that he did not like seeing her walk in his call center, seeing her sitting in his call room or signing her paycheck because of her weight.
13. McClendon told Complainant Mackie that she should not give rides to Griffie anymore because Griffie "needed to up walk up the hill."
14. McClendon commented on Griffie's appearance every day and told her how to dress. He complimented her if she dressed the way he wanted her to and criticized her if she did not.
15. Every day McClendon led a morning employee meeting. McClendon used the meetings to comment on the clothing and physical appearance of Griffie and other female employees. He would identify certain female employees as "well-proportioned" and others, such as Griffie, as "fat." He only complimented thin women and women who wore short skirts or low cut tops. All Complainants heard McClendon make these comments at morning employee meetings.

16. At many of these meetings, at which Griffie was present, McClendon told all of his employees that he hated fat people and wanted to shoot fat people. He also said that he had a gun in his car, had killed many people when he was a Marine and did not hire hit men if he needed someone killed. All Complainants heard McClendon made these statements.
17. On May 14, 2013 McClendon called Griffie and Wieczorek into his office and asked them if they shared men or had three way sex. On or about May 6, 2013 McClendon had given Griffie \$20 for bus fare. When she did not react well to this inquiry about her and Wieczorek's sex life he began to ask for the money back.
18. McClendon also subjected Griffie to unwanted and offensive touching. On a daily basis, McClendon scolded Griffie about her posture and told her that she could not continue to work there if her posture did not improve. Under the pretense of correcting her posture, McClendon would regularly touch Griffie on her shoulders, back and near her breasts. Griffie would tell him to stop or shrug him off because the touching made her uncomfortable. In response, Griffie would yell at her, call her a mother-fucker and say that he could do what he wanted.
19. One day Griffie was suffering from allergies. McClendon called her into his office and told her that he was going to rub Tiger Balm on her to help with her allergies. Griffie did not want to let him touch her, but he told her that she had to let him apply the Tiger Balm or she had to go home. McClendon then rubbed Tiger Balm with his hand onto Griffie's head and chest. The other Complainants witnessed this incident.
20. Shortly after being hired, Griffie confided in McClendon that she suffered from recurrent clinical depression that, at times, could make it difficult for her to work. Instead of working to find a reasonable accommodation for Griffie's disability, McClendon used her disability to harass and humiliate her, and eventually to terminate her.
21. McClendon told Griffie that he considered her depression to be a personal weakness, not an illness. McClendon began regularly telling Griffie that she was weak and that he could not work with weak people. A few weeks before her termination, McClendon began to regularly call Griffie into his office and berate her with loud and abusive language focusing on her "weakness." Each time he would threaten to fire Griffie for her "weakness." Griffie would sit there and cry.
22. On June 26, 2013 McClendon fired Griffie because she was "weak and fat." All Complainants heard McClendon say that he fired Griffie because she was "weak and fat" and because he only wanted tight and fit women working for him. Complainants Mackie, Wieczorek and Fullard all heard McClendon continue to refer to Griffie as "the fat lady" after her termination.

Complainant Mackie

23. Mackie began working at Scott Medical Center on May 6, 2013. About three days later McClendon offered her a promotion because "she looked like she could handle *any* job." McClendon then put his hands on Mackie's shoulders, brought his hands around and pulled the front of her shirt together. He told her that she needed to close the front of her shirt even though it was not revealing. As he did this his hands brushed her breasts.
24. On June 19, 2013 McClendon came up behind Mackie and started rubbing and massaging her back and shoulders.
25. On June 27, 2013 Mackie was going out the door of the office for her break. McClendon walked towards her and blocked the door so that his penis brushed against her side as she passed.
26. Later that day, McClendon asked Mackie to change a light bulb in the ceiling because Mackie was taller. He gave Mackie a chair to stand on. As Mackie was standing on the chair about to screw in the new bulb, McClendon put his hand on her thigh. Mackie was so shocked that she dropped and broke the bulb, got down off the chair and went back to her seat. Complainants Wieczorek and Fullard and co-workers Dorine Emerech and Libby Ebery-Smith witnessed this incident.
27. On July 8, 2013 McClendon came up behind Mackie and started massaging her shoulders and telling her to relax. McClendon then palmed Mackie's buttock and said that Mackie was sexy, well-proportioned and had a nice butt. Mackie pulled away from him. Complainants Wieczorek and Fullard witnessed this incident. Co-worker Anita Harris also saw this incident and told Mackie that McClendon was not allowed to touch her in that way.
28. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Mackie's breasts and crotch area.
29. McClendon would alternately offer to promote or threaten to fire Mackie and the other Complainants to get them to comply with his harassment.
30. By the end of the work day, McClendon's constant harassment left Mackie feeling stressed and suffering from headaches. It also caused tension and arguments with her spouse.
31. Eventually the hostile and offensive work environment became unbearable for Mackie and she resigned on July 26, 2013.

Complainant Wieczorek

32. McClendon constantly commented on the bodies of Wieczorek, Mackie and Fullard. He said that they were "well-proportioned" and had "nice figures". He also told Wieczorek that she had a nice chest.
33. On May 14, 2013 McClendon called Wieczorek and Griffie into his office and asked them if they shared men or had three way sex.
34. One day McClendon asked Wieczorek to follow him so that he could show her the PR office. He opened the door to the PR office and said, "This is where you are going to give me a lap dance." Wieczorek shook her head no and left. Complainant Mackie witnessed this incident.
35. Later that day McClendon asked Wieczorek, Griffie, Mackie and a co-worker named Chuck to go to the physical therapy room. Once there he told Wieczorek to bounce on an exercise ball. McClendon said, "This is where men watch you bounce." Wieczorek got up off the ball and left. Wieczorek felt repulsed and disgusted by these incidents and cried for days.
36. On June 13, 2013 McClendon called Wieczorek into his office. He told her that he had a gun in his car and that he could personally take care of any problems she might have.
37. On June 15, 2013 McClendon told Wieczorek that he could not look at her because she reminded him of the "white devil", McClendon's name for his wife.
38. Sometime between June 18, 2013 and June 21, 2013 McClendon called Wieczorek into his office and wanted to give her his personal telephone number. He asked Wieczorek to call him at night when she got home because he cared about her and was worried about her.
39. On June 19, 2013 McClendon rubbed Wieczorek's shoulders. Wieczorek told him to stop because it made her uncomfortable.
40. On July 1, 2013 when Wieczorek came back from her break, her pillow was missing. McClendon told her that he had taken it. A few minutes later McClendon called Wieczorek into his office and asked her why she needed the pillow. She said that she was having cramps with her period and that the pillow provided comfort. McClendon then rubbed up against her putting his hands on her right hip and stomach area. Wieczorek grabbed her pillow and left.
41. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Wieczorek's breasts and crotch area.

42. As a result of the sexual harassment Wieczorek began experiencing nausea and chronic headaches that required therapy.

43. McClendon terminated Wieczorek on July 16, 2013. A week or two before firing her, McClendon had asked Wieczorek what she was doing over the weekend. Wieczorek said that she was going out with her sister. McClendon handed her \$20 for going out and told Wieczorek to ask him for whatever she needed in the future. Wieczorek felt that McClendon expected something sexual in return for the money, and that she was terminated because she did not give him what he wanted.

Complainant Fullard

44. McClendon constantly commented on Fullard's body and attire. He told her she was "well-proportioned" and had a "nice figure".

45. On June 27, 2013 McClendon came up behind Fullard, said that she looked tense and started to massage her shoulders. As he was giving her a massage, he pressed his penis against Fullard's back. Fullard told him that she did not like what he was doing. McClendon replied that it was his building and that she could get out if she did not like it. Complainant Wieczorek witnessed this incident.

46. On July 9, 2013 at the morning employee meeting McClendon announced that he was Muslim and that it was Ramadan, so he had to fast and could not even have sex with his wife. Fullard told McClendon that it made her uncomfortable for him to talk about his sex life. McClendon replied that he could say whatever he wanted to. Complainants Mackie and Wieczorek were also at the meeting and were made uncomfortable by his statement.

47. On July 11, 2013 McClendon pulled Fullard into his office and attempted to make conversation with her about how she was feeling and how things were going at home. All the while McClendon was winking at Fullard and groping his penis.

48. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Fullard's breasts and crotch area.

49. The last time she got paid, McClendon told Fullard that she had to pick up her check at another location an hour away even though he knew that Fullard did not have transportation. McClendon kept pressuring Fullard to let him give her a ride in his car to pick up her check. Fullard did not want to get in McClendon's car because of his harassment and also because McClendon often told everyone he kept a gun in his car.

50. As a result of this harassment Fullard began to suffer dizzy spells and have trouble concentrating and functioning. It also caused tension and arguments between Fullard and her fiancée. Eventually the hostile and offensive work environment became unbearable for Fullard and she resigned on July 19, 2013.

All Complainants

51. In addition to being harassed themselves, Complainants witnessed McClendon sexually harass and offensively touch all of his female employees on a daily basis. This pervasive atmosphere of harassment contributed to the hostile and offense work environment.

52. All of the Complainants experienced and witnessed McClendon regularly sexually harass all of his female employees in the following ways:

- a. By massaging the backs, necks and shoulders of female employees while rubbing his penis against their bodies;
- b. By standing behind seated female employees and looking down their shirts.
- c. By opening the door to the women's restroom every time a female employee exited and sniffing the air;
- d. By telling female employees how to dress and only complimenting female employees who wore short skirts or low cut tops;
- e. By publicly critiquing the bodies of his female employees and pointing out which ones were "well-proportioned" and which ones were "fat";
- f. By calling overweight female employees "fat" and publicly stating that he could not work with fat people and wanted to shoot fat people;
- g. By publicly calling female employees "bitches" and "barn animals"; and
- h. By blocking doorways with his body so that female employees would have to brush against his penis to cross the threshold.

53. Specifically, on June 26, 2013 Complainants Mackde, Wieczorek and Fullard saw McClendon come up behind a female co-worker named Dorine Emereck and massage her shoulders. Emereck seemed uncomfortable.

54. On July 10, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon massaging Dorine Emereck's shoulders. During their break, Wieczorek asked Emereck if McClendon often massaged her. Emereck said that he did.
55. On July 15, 2013 Mackie, Wieczorek and Fullard witnessed McClendon call two new female employees named Danielle and Tracey into his office. They saw McClendon give Danielle and Tracey back and shoulder massages. At one point McClendon pulled down Tracey's outer top so that he could touch her skin.
56. All Complainants also experienced and witnessed McClendon use fear, intimidation, abusive language, the offer and then withdrawal of promotions, and the threat of termination to make his female employees comply with his harassment.
57. In June 2013, Complainants Griffie and Wieczorek went to apply for jobs at another call center. McClendon's daughter happened to work at the other call center and called McClendon when she recognized Griffie and Wieczorek. McClendon told his daughter not to hire them. Upon their return, McClendon threatened to blackball Griffie from other jobs in telemarketing.
58. On June 28, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon scream and curse at a female employee named Libby Eber-Smith because it was raining outside and there was mud on her shoes. McClendon made Eber-Smith get on her hands and knees and scrub the floor. McClendon also raised his hand as if he was going to smack Eber-Smith in the face. Eber-Smith reported to Complainants that McClendon actually hit her later that day.
59. On July 2, 2013 Complainants Mackie, Wieczorek and Fullard witnessed McClendon screaming insults Libby Eber-Smith. While Complainants were on break, Eber-Smith locked herself in the bathroom. When Complainants came back from break, McClendon was standing outside the bathroom door. When Eber-Smith finally came out of the bathroom she could not work because she was crying. McClendon said that he treated Eber-Smith badly because she was disabled. McClendon told everyone that he would do whatever he wanted to do and that he had a gun and would use it.
60. On July 17, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon call a female employee named Tracey into his office. When Tracey came out she was bawling. Tracey told Complainants that McClendon had told her that she was weak and needed to toughen-up. To prevent the women from talking about his harassment McClendon came out of his office and told everyone not ask "why" if they someone crying.
61. All Complainants heard McClendon repeatedly say that he was willing to beat people up or kill people and that he kept a gun in his car.

62. On June 25, 2013 all Complainants went to McClendon's supervisor, Clinic Director Dr. Gary T. Heironimus, to complain about McClendon's sexual harassment, offensive touching and intimidation. As soon as Complainants said that they were there to discuss McClendon's behavior, Dr. Heironimus cut them off and refused to listen to any of the details. Dr. Heironimus told them, "You need to talk to Bob yourselves." Complainant Mackie replied to Dr. Heironimus that he was McClendon's boss and needed to take care of the problem. Dr. Heironimus refused to listen to the substance of their complaints.
63. McClendon's conduct and the conduct of Scott Medical Center in authorizing McClendon to act in the manner he did, violated Title VII of the Civil Rights Act and the Americans with Disability Act.
64. Complainants Griffie, Mackie, Wieczorek and Fullard request this Commission assume jurisdiction over their Charge, and cross-file the Charge with the Pennsylvania Human Relations Commission.

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I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

8/23/13

(Date Signed)


Allyssa Griffie

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I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Aug. 12, 2013
(Date Signed)

Donna Mackie
Donna Mackie

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2013 AUG 26 PM 4 53

I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

8/23/13
(Date Signed)

Kaitlyn Wieczorek
Kaitlyn Wieczorek

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2013 AUG 26 PM 4:53

I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

8-12-13
(Date Signed)

Brittany Fullard
Brittany Fullard

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2013 AUG 26 PM 4:53



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Pittsburgh Area Office**

William S. Moorhead Federal Building
1000 Liberty Avenue, Room 1112
Pittsburgh, PA 15222

Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820

Pittsburgh Status Line: (866) 408-8075

Pittsburgh Direct Dial: (800) 395-5902

TTY: (412) 395-5904

FAX: (412) 395-5749

Website: www.eeoc.gov

NOTICE OF SETTLEMENT

This refers to the Charge of Employment Discrimination which has been received by the U.S. Equal Employment Opportunity Commission (EEOC). It is the policy of the Pittsburgh Area Office to attempt to negotiate a settlement for such a Charge. The EEOC Representative attempts to facilitate settlement discussions between the parties in the hopes of obtaining an agreement mutually satisfactory to the parties and the EEOC. If such a settlement is negotiated, the Commission will prepare a Settlement Agreement to be signed by all parties, including the EEOC.

Negotiated Settlement Agreements typically include the following:

- a.) *a description of the relief to be provided to the Charging Party as a result of the Agreement;*
- b.) *means of monitoring to insure that the terms of the relief are met;*
- c.) *a statement which expressly indicates that the Respondent is not acknowledging any violation of the statute(s) under which the Charge was filed;*
- d.) *a clause prohibiting retaliation; and*
- e.) *a waiver by the Charging Party of his/her private suit rights under the applicable statutes enforced by the EEOC.*

In addition, a Settlement Agreement concludes EEOC's investigation of the subject charge. Such EEOC closure would eliminate the need thereafter for Respondent to prepare a position statement (See page #2 of this handout), respond to Requests for Information, make witnesses available, or to otherwise respond to the Commission's investigation of that Charge.

Although Respondent will be contacted by an EEOC Representative to discuss the possibility of settlement, this office's increasing inventory has resulted in some delay before such settlement efforts can be initiated. However, if the Respondent at this time is interested in pursuing settlement, the Respondent's representative is invited to contact this office directly as a means of insuring expedited settlement discussions.

WHAT A POSITION STATEMENT SHOULD INCLUDE

PART I: GENERAL INFORMATION:

1. NAME AND ADDRESS OF THE ORGANIZATION:

State the correct name and address of the specific installation charged. If the mailing address is a P.O. Box number, provide the physical location of your installation by street address.

2. REPRESENTATIVE OF THE ORGANIZATION:

State the name, title, business address and business telephone number of the person with, or through whom, there should be communications relating to this matter.

3. KIND OF BUSINESS:

Briefly identify the primary function of the establishment charged (e.g., "automobile assembly"; "retail sales of men's clothing"; "banking and trust services"; etc.).

NUMBER OF EMPLOYEES:

State the number of persons (including supervisors and managers) employed at the specific installation charged and by all organization as a whole on the most recent payroll date. If the total number of employees is over fifty (50), approximations are acceptable.

EEO-1 REPORTS:

Please provide copies of your most recent EEO-1 Report for the current and preceding two (2) years.

PART II: RESPONSE TO THE CHARGE:

The EEOC, an objective fact-finding agency, has made no determination on the merits of this charge. In order to facilitate a prompt investigation or resolution of this charge, you are requested to provide, within the specified time frame (30 days) the general information above along with the following:

1. The facts and circumstances surrounding each alleged discriminatory act, and describe and explain your reasons for taking such actions. Provide as attachment any documents in support of your position.
2. Copies of the applicable policies, practices or procedures relating to the act alleged to be discriminatory.
3. Names and Job Titles of all officials who participated in or made decisions relative to the issues raised in the charge and what role was played by each named official.
4. The specific date (s), action (s) and location (s) applicable to each alleged discriminatory act and any consequent or subsequent action.
5. Names of witnesses to the alleged discriminatory acts other than those named in #3 above.
6. State whether this matter has been resolved, and if not, how the matter might amicably be resolved and your proposal for resolution.

EEOC RULES AND REGULATIONS

Section 1601.15 of the Commission's Procedural Regulations provides that persons charged with employment discrimination, such as yourself, may submit a statement of position or evidence with respect to the allegations contained in this charge.

The Commission's Recordkeeping and Reporting Requirements are set forth at 29 CFR, Part 1602 (see particularly § 1602.12 (e) below) for Title VII of the Civil Rights Act; 29 CFR, Part 1627, for the Age Discrimination in Employment Act; and 29 CFR, Part 1620 for the Equal Pay Act.¹ These Regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. They also prescribe record retention periods. In most cases, three (3) years for basic payroll records and one year for personnel records. Questions regarding retention periods and the types of records to be retained should be resolved by reference to the regulations.

§ 1602.14 Preservation of records made or kept.

(e) Where a charge of discrimination has been filed, or an action brought by the Commission or the Attorney General, against an employer under title VI, the respondent employer shall preserve all personnel records relevant to the charge or the action. These term personnel records relevant to the charge, for example, would include personnel employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person, and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected. The date of "final" disposition of the charge or action means the date of expiration of the statutory period within which the aggrieved person may bring an action in U.S. District Court, or where an action is brought against an employer either by the aggrieved person, the Commission, or by the Attorney General, the date on which the litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of the Civil Rights Act of 1964, as amended, and Section 2(a) of the Age Discrimination in Employment Act of 1967, as amended states:

"It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, or for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this title."

The Equal Pay Act of 1963 contains similar provisions. Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although it is not necessary that you be represented by an attorney while we are handling this charge, you have a right, and may wish to retain an attorney to represent you. If you are represented by an attorney we request that you provide the Commission with your attorney's name, address/telephone number and that you ask your attorney to write to the Commission confirming such representation.

EEOC FORM 131 (11/09)

U.S. Equal Employment Opportunity Commission

Chief Executive Officer
 Human Resources Department
 SCOTT MEDICAL CENTER P C
 2275 Swallow Hill Road
 Building 900
 Pittsburgh, PA 15220

PERSON FILING CHARGE

Allyssa Griffie

THIS PERSON (check one or both)

 Claims To Be Aggrieved Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

533-2013-01344

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

- Title VII of the Civil Rights Act (Title VII) The Equal Pay Act (EPA) The Americans with Disabilities Act (ADA)
- The Age Discrimination in Employment Act (ADEA) The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1. No action is required by you at this time.
 2. Please call the EEOC Representative listed below concerning the further handling of this charge.
 3. Please provide by 02-DEC-13 a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
 4. Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
 5. EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by _____ to _____.
- If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Frank E. Rodia,
 Intake Supervisor

EEOC Representative

Telephone (412) 395-5865

Pittsburgh Area Office
 1000 Liberty Avenue
 Room 1112
 Pittsburgh, PA 15222
 Fax: (412) 395-5749

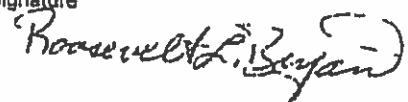
Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

- Race Color Sex Religion National Origin Age Disability Retaliation Genetic Information Other

See enclosed copy of charge of discrimination.

If you are not the person handling this matter,
 please contact the EEOC within seven (7)
 days, with the correct person's name and
 address who will be the contact person.

Date	Name / Title of Authorized Official	Signature
November 7, 2013	Roosevelt L. Bryant, Acting Director	

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ALLYSSA GRIFFIE, : EEOC Charge No. 533-2013-01
DONNA MACKIE, :
KAITLYN WIECZOREK, and :
BRITTANY FULLARD, :
Complainants, :
v. : Pennsylvania Commission on
: Human Relations Docket No.
SCOTT MEDICAL HEALTH CENTER: :
Respondent. :

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EEOC PITTSBURGH AREA OFFICE
2013 AUG 26 PM 6 53

CHARGE OF DISCRIMINATION

1. Complainant Allyssa Griffie, resides at:

156 ½ Middle Way
Pittsburgh, PA 15210

2. Complainant Donna Mackie resides at:

715 Mercer Street, Apt. 415
Pittsburgh, PA 15219

3. Complainant Kaitlyn Wieczorek resides at:

4735 Hatfield Street
Pittsburgh, PA 15201

4. Complainant Brittany Fullard resides at:

120 Harriet Street
Rankin, PA 15104

5. The Respondent is Scott Medical Center, P.C. at the following address:

2275 Swallow Hill Road, Bldg. 900
Pittsburgh, PA 152220

6. Complainants Griffie, Mackie, Wieczorek and Fullard all worked as telephone appointment setters for Respondent Scott Medical Center.

7. Griffie, Mackie and Wieczorek started working at Scott Medical Center on May 6, 2013. Fullard began on June 17, 2013.
8. Complainants' direct supervisor was Call Center Director Robert McClendon.
9. McClendon subjected all Complainants to sexual harassment and unwanted touching so frequently and severely that it created a hostile and offensive work environment and resulted in adverse employment decisions being taken against them.
10. McClendon also harassed Complainant Griffie about her disability so frequently and severely that it created a hostile and offensive work environment and resulted in an adverse employment decision being taken against her.

Complainant Griffie

11. McClendon's sexual harassment of Griffie mainly focused on her weight and his stereotypical views of femininity. He called her "fat" and referred to her in the office as the "fat lady." Everyone in the office, including all Complainants, heard McClendon call Griffie "fat" and refer to her as the "fat lady."
12. McClendon gave Griffie a brochure from a weight loss program offered by Scott Medical Center. He told Griffie that she had to join or she could not work there anymore. The program cost \$99 per month. McClendon told Griffie that he signed her paychecks so he knew that she could afford the program and that her weight was affecting him. Griffie said that she did not like it when he spoke to her that way. McClendon responded that he did not like seeing her walk in his call center, seeing her sitting in his call room or signing her paycheck because of her weight.
13. McClendon told Complainant Mackie that she should not give rides to Griffie anymore because Griffie "needed to up walk up the hill."
14. McClendon commented on Griffie's appearance every day and told her how to dress. He complimented her if she dressed the way he wanted her to and criticized her if she did not.
15. Every day McClendon led a morning employee meeting. McClendon used the meetings to comment on the clothing and physical appearance of Griffie and other female employees. He would identify certain female employees as "well-proportioned" and others, such as Griffie, as "fat." He only complimented thin women and women who wore short skirts or low cut tops. All Complainants heard McClendon make these comments at morning employee meetings.

16. At many of these meetings, at which Griffie was present, McClendon told all of his employees that he hated fat people and wanted to shoot fat people. He also said that he had a gun in his car, had killed many people when he was a Marine and did not hire hit men if he needed someone killed. All Complainants heard McClendon made these statements.
17. On May 14, 2013 McClendon called Griffie and Wieczorek into his office and asked them if they shared men or had three way sex. On or about May 6, 2013 McClendon had given Griffie \$20 for bus fare. When she did not react well to this inquiry about her and Wieczorek's sex life he began to ask for the money back.
18. McClendon also subjected Griffie to unwanted and offensive touching. On a daily basis, McClendon scolded Griffie about her posture and told her that she could not continue to work there if her posture did not improve. Under the pretense of correcting her posture, McClendon would regularly touch Griffie on her shoulders, back and near her breasts. Griffie would tell him to stop or shrug him off because the touching made her uncomfortable. In response, Griffie would yell at her, call her a mother-fucker and say that he could do what he wanted.
19. One day Griffie was suffering from allergies. McClendon called her into his office and told her that he was going to rub Tiger Balm on her to help with her allergies. Griffie did not want to let him touch her, but he told her that she had to let him apply the Tiger Balm or she had to go home. McClendon then rubbed Tiger Balm with his hand onto Griffie's head and chest. The other Complainants witnessed this incident.
20. Shortly after being hired, Griffie confided in McClendon that she suffered from recurrent clinical depression that, at times, could make it difficult for her to work. Instead of working to find a reasonable accommodation for Griffie's disability, McClendon used her disability to harass and humiliate her, and eventually to terminate her.
21. McClendon told Griffie that he considered her depression to be a personal weakness, not an illness. McClendon began regularly telling Griffie that she was weak and that he could not work with weak people. A few weeks before her termination, McClendon began to regularly call Griffie into his office and berate her with loud and abusive language focusing on her "weakness." Each time he would threaten to fire Griffie for her "weakness." Griffie would sit there and cry.
22. On June 26, 2013 McClendon fired Griffie because she was "weak and fat." All Complainants heard McClendon say that he fired Griffie because she was "weak and fat" and because he only wanted tight and fit women working for him. Complainants Mackie, Wieczorek and Fullard all heard McClendon continue to refer to Griffie as "the fat lady" after her termination.

Complainant Mackie

23. Mackie began working at Scott Medical Center on May 6, 2013. About three days later McClendon offered her a promotion because "she looked like she could handle *any* job." McClendon then put his hands on Mackie's shoulders, brought his hands around and pulled the front of her shirt together. He told her that she needed to close the front of her shirt even though it was not revealing. As he did this his hands brushed her breasts.
24. On June 19, 2013 McClendon came up behind Mackie and started rubbing and massaging her back and shoulders.
25. On June 27, 2013 Mackie was going out the door of the office for her break. McClendon walked towards her and blocked the door so that his penis brushed against her side as she passed.
26. Later that day, McClendon asked Mackie to change a light bulb in the ceiling because Mackie was taller. He gave Mackie a chair to stand on. As Mackie was standing on the chair about to screw in the new bulb, McClendon put his hand on her thigh. Mackie was so shocked that she dropped and broke the bulb, got down off the chair and went back to her seat. Complainants Wieczorek and Fullard and co-workers Dorine Emerech and Libby Ebery-Smith witnessed this incident.
27. On July 8, 2013 McClendon came up behind Mackie and started massaging her shoulders and telling her to relax. McClendon then palmed Mackie's buttock and said that Mackie was sexy, well-proportioned and had a nice butt. Mackie pulled away from him. Complainants Wieczorek and Fullard witnessed this incident. Co-worker Anita Harris also saw this incident and told Mackie that McClendon was not allowed to touch her in that way.
28. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Mackie's breasts and crotch area.
29. McClendon would alternately offer to promote or threaten to fire Mackie and the other Complainants to get them to comply with his harassment.
30. By the end of the work day, McClendon's constant harassment left Mackie feeling stressed and suffering from headaches. It also caused tension and arguments with her spouse.
31. Eventually the hostile and offensive work environment became unbearable for Mackie and she resigned on July 26, 2013.

Complainant Wieczorek

32. McClendon constantly commented on the bodies of Wieczorek, Mackie and Fullard. He said that they were "well-proportioned" and had "nice figures". He also told Wieczorek that she had a nice chest.
33. On May 14, 2013 McClendon called Wieczorek and Griffie into his office and asked them if they shared men or had three way sex.
34. One day McClendon asked Wieczorek to follow him so that he could show her the PR office. He opened the door to the PR office and said, "This is where you are going to give me a lap dance." Wieczorek shook her head no and left. Complainant Mackie witnessed this incident.
35. Later that day McClendon asked Wieczorek, Griffie, Mackie and a co-worker named Chuck to go to the physical therapy room. Once there he told Wieczorek to bounce on an exercise ball. McClendon said, "This is where men watch you bounce." Wieczorek got up off the ball and left. Wieczorek felt repulsed and disgusted by these incidents and cried for days.
36. On June 13, 2013 McClendon called Wieczorek into his office. He told her that he had a gun in his car and that he could personally take care of any problems she might have.
37. On June 15, 2013 McClendon told Wieczorek that he could not look at her because she reminded him of the "white devil", McClendon's name for his wife.
38. Sometime between June 18, 2013 and June 21, 2013 McClendon called Wieczorek into his office and wanted to give her his personal telephone number. He asked Wieczorek to call him at night when she got home because he cared about her and was worried about her.
39. On June 19, 2013 McClendon rubbed Wieczorek's shoulders. Wieczorek told him to stop because it made her uncomfortable.
40. On July 1, 2013 when Wieczorek came back from her break, her pillow was missing. McClendon told her that he had taken it. A few minutes later McClendon called Wieczorek into his office and asked her why she needed the pillow. She said that she was having cramps with her period and that the pillow provided comfort. McClendon then rubbed up against her putting his hands on her right hip and stomach area. Wieczorek grabbed her pillow and left.
41. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Wieczorek's breasts and crotch area.

42. As a result of the sexual harassment Wieczorek began experiencing nausea and chronic headaches that required therapy.
43. McClendon terminated Wieczorek on July 16, 2013. A week or two before firing her, McClendon had asked Wieczorek what she was doing over the weekend. Wieczorek said that she was going out with her sister. McClendon handed her \$20 for going out and told Wieczorek to ask him for whatever she needed in the future. Wieczorek felt that McClendon expected something sexual in return for the money, and that she was terminated because she did not give him what he wanted.

Complainant Fullard

44. McClendon constantly commented on Fullard's body and attire. He told her she was "well-proportioned" and had a "nice figure".
45. On June 27, 2013 McClendon came up behind Fullard, said that she looked tense and started to massage her shoulders. As he was giving her a massage, he pressed his penis against Fullard's back. Fullard told him that she did not like what he was doing. McClendon replied that it was his building and that she could get out if she did not like it. Complainant Wieczorek witnessed this incident.
46. On July 9, 2013 at the morning employee meeting McClendon announced that he was Muslim and that it was Ramadan, so he had to fast and could not even have sex with his wife. Fullard told McClendon that it made her uncomfortable for him to talk about his sex life. McClendon replied that he could say whatever he wanted to. Complainants Mackie and Wieczorek were also at the meeting and were made uncomfortable by his statement.
47. On July 11, 2013 McClendon pulled Fullard into his office and attempted to make conversation with her about how she was feeling and how things were going at home. All the while McClendon was winking at Fullard and groping his penis.
48. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Fullard's breasts and crotch area.
49. The last time she got paid, McClendon told Fullard that she had to pick up her check at another location an hour away even though he knew that Fullard did not have transportation. McClendon kept pressuring Fullard to let him give her a ride in his car to pick up her check. Fullard did not want to get in McClendon's car because of his harassment and also because McClendon often told everyone he kept a gun in his car.

50. As a result of this harassment Fullard began to suffer dizzy spells and have trouble concentrating and functioning. It also caused tension and arguments between Fullard and her fiancée. Eventually the hostile and offensive work environment became unbearable for Fullard and she resigned on July 19, 2013.

All Complainants

51. In addition to being harassed themselves, Complainants witnessed McClendon sexually harass and offensively touch all of his female employees on a daily basis. This pervasive atmosphere of harassment contributed to the hostile and offense work environment.

52. All of the Complainants experienced and witnessed McClendon regularly sexually harass all of his female employees in the following ways:

- a. By massaging the backs, necks and shoulders of female employees while rubbing his penis against their bodies;
- b. By standing behind seated female employees and looking down their shirts.
- c. By opening the door to the women's restroom every time a female employee exited and sniffing the air;
- d. By telling female employees how to dress and only complimenting female employees who wore short skirts or low cut tops;
- e. By publicly critiquing the bodies of his female employees and pointing out which ones were "well-proportioned" and which ones were "fat";
- f. By calling overweight female employees "fat" and publicly stating that he could not work with fat people and wanted to shoot fat people;
- g. By publicly calling female employees "bitches" and "barn animals"; and
- h. By blocking doorways with his body so that female employees would have to brush against his penis to cross the threshold.

53. Specifically, on June 26, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon come up behind a female co-worker named Dorine Emereck and massage her shoulders. Emereck seemed uncomfortable.

54. On July 10, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon massaging Dorine Emereck's shoulders. During their break, Wieczorek asked Emereck if McClendon often massaged her. Emereck said that he did.
55. On July 15, 2013 Mackie, Wieczorek and Fullard witnessed McClendon call two new female employees named Danielle and Tracey into his office. They saw McClendon give Danielle and Tracey back and shoulder massages. At one point McClendon pulled down Tracey's outer top so that he could touch her skin.
56. All Complainants also experienced and witnessed McClendon use fear, intimidation, abusive language, the offer and then withdrawal of promotions, and the threat of termination to make his female employees comply with his harassment.
57. In June 2013, Complainants Griffie and Wieczorek went to apply for jobs at another call center. McClendon's daughter happened to work at the other call center and called McClendon when she recognized Griffie and Wieczorek. McClendon told his daughter not to hire them. Upon their return, McClendon threatened to blackball Griffie from other jobs in telemarketing.
58. On June 28, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon scream and curse at a female employee named Libby Eber-Smith because it was raining outside and there was mud on her shoes. McClendon made Eber-Smith get on her hands and knees and scrub the floor. McClendon also raised his hand as if he was going to smack Eber-Smith in the face. Eber-Smith reported to Complainants that McClendon actually hit her later that day.
59. On July 2, 2013 Complainants Mackie, Wieczorek and Fullard witnessed McClendon screaming insults Libby Eber-Smith. While Complainants were on break, Eber-Smith locked herself in the bathroom. When Complainants came back from break, McClendon was standing outside the bathroom door. When Eber-Smith finally came out of the bathroom she could not work because she was crying. McClendon said that he treated Eber-Smith badly because she was disabled. McClendon told everyone that he would do whatever he wanted to do and that he had a gun and would use it.
60. On July 17, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon call a female employee named Tracey into his office. When Tracey came out she was bawling. Tracey told Complainants that McClendon had told her that she was weak and needed to toughen-up. To prevent the women from talking about his harassment McClendon came out of his office and told everyone not ask "why" if they someone crying.
61. All Complainants heard McClendon repeatedly say that he was willing to beat people up or kill people and that he kept a gun in his car.

62. On June 25, 2013 all Complainants went to McClendon's supervisor, Clinic Director Dr. Gary T. Heironimus, to complain about McClendon's sexual harassment, offensive touching and intimidation. As soon as Complainants said that they were there to discuss McClendon's behavior, Dr. Heironimus cut them off and refused to listen to any of the details. Dr. Heironimus told them, "You need to talk to Bob yourselves." Complainant Mackie replied to Dr. Heironimus that he was McClendon's boss and needed to take care of the problem. Dr. Heironimus refused to listen to the substance of their complaints.
63. McClendon's conduct and the conduct of Scott Medical Center in authorizing McClendon to act in the manner he did, violated Title VII of the Civil Rights Act and the Americans with Disability Act.
64. Complainants Griffie, Mackie, Wieczorek and Fullard request this Commission assume jurisdiction over their Charge, and cross-file the Charge with the Pennsylvania Human Relations Commission.

RECEIVED
EEOC PITTSBURGH AREA OFFICE
2013 AUG 26 PM 4:53

I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

8/23/13
(Date Signed)


Allyssa Griffie

RECEIVED
EEOC PITTSBURGH AREA OFFICE
2013 AUG 26 PM 4:54

I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Aug. 12, 2013
(Date Signed)

Donna Mackie
Donna Mackie

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EEOC PITTSBURGH AREA OFFICE
2013 AUG 26 PH u. 54

I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

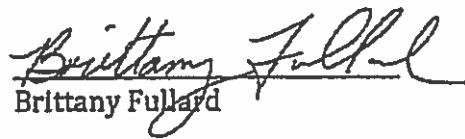
8/23/13
(Date Signed)

Kaitlyn Wieczorek
Kaitlyn Wieczorek

RECEIVED
EEOC PITTSBURGH AREA OFFICE
2013 AUG 26 PH - Sl

I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

8-12-13
(Date Signed)


Brittany Fullard

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EEOC PITTSBURGH AREA OFFICE
2013 AUG 26 PM 4:54



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Pittsburgh Area Office**

William S. Moorhead Federal Building
1000 Liberty Avenue, Room 1112
Pittsburgh, PA 15222

Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820

Pittsburgh Status Line: (866) 408-8075

Pittsburgh Direct Dial: (800) 395-5902

TTY: (412) 395-5904

FAX: (412) 395-5749

Website: www.eeoc.gov

NOTICE OF SETTLEMENT

This refers to the Charge of Employment Discrimination which has been received by the U.S. Equal Employment Opportunity Commission (EEOC). It is the policy of the Pittsburgh Area Office to attempt to negotiate a settlement for such a Charge. The EEOC Representative attempts to facilitate settlement discussions between the parties in the hopes of obtaining an agreement mutually satisfactory to the parties and the EEOC. If such a settlement is negotiated, the Commission will prepare a Settlement Agreement to be signed by all parties, including the EEOC.

Negotiated Settlement Agreements typically include the following:

- a.) *a description of the relief to be provided to the Charging Party as a result of the Agreement;*
- b.) *means of monitoring to insure that the terms of the relief are met;*
- c.) *a statement which expressly indicates that the Respondent is not acknowledging any violation of the statute(s) under which the Charge was filed;*
- d.) *a clause prohibiting retaliation; and*
- e.) *a waiver by the Charging Party of his/her private suit rights under the applicable statutes enforced by the EEOC.*

In addition, a Settlement Agreement concludes EEOC's investigation of the subject charge. Such EEOC closure would eliminate the need thereafter for Respondent to prepare a position statement (See page #2 of this handout), respond to Requests for Information, make witnesses available, or to otherwise respond to the Commission's investigations of that Charge.

Although Respondent will be contacted by an EEOC Representative to discuss the possibility of settlement, this office's increasing inventory has resulted in some delay before such settlement efforts can be initiated. However, if the Respondent at this time is interested in pursuing settlement, the Respondent's representative is invited to contact this office directly as a means of insuring expedited settlement discussions.

WHAT A POSITION STATEMENT SHOULD INCLUDE

PART I: GENERAL INFORMATION:

1. NAME AND ADDRESS OF THE ORGANIZATION:

State the correct name and address of the specific installation charged. If the mailing address is a P.O. Box number, provide the physical location of your installation by street address.

2. REPRESENTATIVE OF THE ORGANIZATION:

State the name, title, business address and business telephone number of the person(s) with whom there should be communications relating to this matter.

3. NATURE OF BUSINESS:

Briefly identify the primary function of the establishment charged (e.g., "automobile assembly"; "retail salesmen's clothing"; "banking and trust services", etc.)

4. NUMBER OF EMPLOYEES:

State the number of persons (including supervisors and managers) employed at the specific installation charged and by all organization as a whole on the most recent payroll date. If the total number of employees is over fifty (50), approximations are acceptable.

5. EEO-1 REPORTS

Please provide copies of your most recent EEO-1 Reports for the current and preceding two (2) years.

PART II: RESPONSE TO THE CHARGE:

The EEOC, an objective fact-finding agency, has made no determination on the merits of this charge. In order to facilitate a prompt investigation or resolution of this charge, you are requested to provide, within the specified time frame (30) days) the general information above along with the following:

1. The facts and circumstances surrounding each alleged discriminatory act, and describe and explain your reasons for taking such actions. Provide as attachments any documents in support of your position.
2. Copies of the applicable policies, practices or procedures relating to the act alleged to be discriminatory.
3. Names and Job Titles of all officials who participated in or made decisions relative to the issues raised in the charge and what role was played by each named official.
4. The specific date (s), action (s) and location (s) applicable to each alleged discriminatory act and any consequent or subsequent action.
5. Names of witnesses to the alleged discriminatory acts other than those named in #3 above.
6. State whether this matter has been resolved, and if not, how the matter might amicably be resolved and your proposal for resolution.

EEOC RULES AND REGULATIONS

Section 1601.15 of the Commission's Procedural Regulations provides that persons charged with employment discrimination, such as yourself, may submit a statement of position or evidence with respect to the allegations contained in this charge.

The Commission's Recordkeeping and Reporting Requirements are set forth at 29 CFR, Part 1602 (see particularly § 1602.12 (a) below) for Title VII of the Civil Rights Act; 29 CFR, Part 1627, for the Age Discrimination in Employment Act; and 29 CFR, Part 1620 for the Equal Pay Act. These Regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. They also prescribe record retention periods. In most cases, three (3) years for basic payroll records and one year for personnel records. Questions regarding retention periods and the types of records to be retained should be resolved by reference to the regulations.

§ 1602.14 Preservation of records made or kept.

- (a) When a charge of discrimination has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII, the respondent employer shall preserve all personnel records relevant to the charge or the action. These personnel records relevant to the charge, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person, and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected. The date of final disposition of the charge or action means the date of expiration of the statutory period within which the aggrieved person may bring an action in U.S. District Court, or where an action is brought against an employer either by the aggrieved person, the Commission, or by the Attorney General, the date on which the litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of the Civil Rights Act of 1964, as amended, and Section 4(e) of the Age Discrimination in Employment Act of 1967, as amended, states:

It shall be unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this title.

The Equal Pay Act of 1963 contains similar provisions. Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although it is not necessary that you be represented by an attorney while we are handling this charge, you have a right, and may wish to retain an attorney to represent you. If you are represented by an attorney, we request that you provide the Commission with your attorney's name, address/telephone number, and that you ask your attorney to write to the Commission confirming such representation.

EEOC FORM 131 (11/09)

U.S. Equal Employment Opportunity Commission

Chief Executive Officer
 Human Resources Department
 SCOTT MEDICAL HEALTH CENTER
 2275 Swallow Hill Road
 Building 900
 Pittsburgh, PA 15220

PERSON FILING CHARGE

Donna Mackie

THIS PERSON (check one or both)

 Claims To Be Aggrieved Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

533-2013-01346

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For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Frank E. Rodia,
 Intake Supervisor

EEOC Representative

Telephone (412) 395-5865

Pittsburgh Area Office
 1000 Liberty Avenue
 Room 1112
 Pittsburgh, PA 15222
 Fax: (412) 395-5749

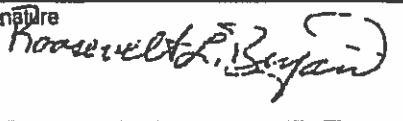
Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

- Race Color Sex Religion National Origin Age Disability Retaliation Genetic Information Other

See enclosed copy of charge of discrimination.

If you are not the person handling this matter,
 please contact the EEOC within seven (7)
 days, with the correct person's name and
 address who will be the contact person.

Date	Name / Title of Authorized Official	Signature
November 7, 2013	Roosevelt L. Bryant, Acting Director	

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ALLYSSA GRIFFIE, : EEOC Charge No. 633-2013-01346
DONNA MACKIE, :
KAITLYN WIECZOREK, and :
BRITTANY FULLARD, :
Complainants, :
v. : Pennsylvania Commission on
: Human Relations Docket No.
SCOTT MEDICAL HEALTH CENTER: :
Respondent :
:

CHARGE OF DISCRIMINATION

1. Complainant Allyssa Griffie, resides at:

156 ½ Middle Way
Pittsburgh, PA 15210

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2013 AUG 26 PM 4:52

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715 Mercer Street, Apt. 415
Pittsburgh, PA 15219

3. Complainant Kaitlyn Wieczorek resides at:

4735 Hatfield Street
Pittsburgh, PA 15201

4. Complainant Brittany Fullard resides at:

120 Harriet Street
Rankin, PA 15104

5. The Respondent is Scott Medical Center, P.C. at the following address:

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Pittsburgh, PA 152220

6. Complainants Griffie, Mackie, Wieczorek and Fullard all worked as telephone appointment setters for Respondent Scott Medical Center.

7. Griffie, Mackie and Wieczorek started working at Scott Medical Center on May 6, 2013. Fullard began on June 17, 2013.
8. Complainants' direct supervisor was Call Center Director Robert McClendon.
9. McClendon subjected all Complainants to sexual harassment and unwanted touching so frequently and severely that it created a hostile and offensive work environment and resulted in adverse employment decisions being taken against them.
10. McClendon also harassed Complainant Griffie about her disability so frequently and severely that it created a hostile and offensive work environment and resulted in an adverse employment decision being taken against her.

Complainant Griffie

11. McClendon's sexual harassment of Griffie mainly focused on her weight and his stereotypical views of femininity. He called her "fat" and referred to her in the office as the "fat lady." Everyone in the office, including all Complainants, heard McClendon call Griffie "fat" and refer to her as the "fat lady."
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22. On June 26, 2013 McClendon fired Griffie because she was "weak and fat." All Complainants heard McClendon say that he fired Griffie because she was "weak and fat" and because he only wanted tight and fit women working for him. Complainants Mackie, Wieczorek and Fullard all heard McClendon continue to refer to Griffie as "the fat lady" after her termination.

Complainant Mackie

23. Mackie began working at Scott Medical Center on May 6, 2013. About three days later McClendon offered her a promotion because "she looked like she could handle *any* job." McClendon then put his hands on Mackie's shoulders, brought his hands around and pulled the front of her shirt together. He told her that she needed to close the front of her shirt even though it was not revealing. As he did this his hands brushed her breasts.
24. On June 19, 2013 McClendon came up behind Mackie and started rubbing and massaging her back and shoulders.
25. On June 27, 2013 Mackie was going out the door of the office for her break. McClendon walked towards her and blocked the door so that his penis brushed against her side as she passed.
26. Later that day, McClendon asked Mackie to change a light bulb in the ceiling because Mackie was taller. He gave Mackie a chair to stand on. As Mackie was standing on the chair about to screw in the new bulb, McClendon put his hand on her thigh. Mackie was so shocked that she dropped and broke the bulb, got down off the chair and went back to her seat. Complainants Wieczorek and Fullard and co-workers Dorine Emerech and Libby Ebery-Smith witnessed this incident.
27. On July 8, 2013 McClendon came up behind Mackie and started massaging her shoulders and telling her to relax. McClendon then palmed Mackie's buttock and said that Mackie was sexy, well-proportioned and had a nice butt. Mackie pulled away from him. Complainants Wieczorek and Fullard witnessed this incident. Co-worker Anita Harris also saw this incident and told Mackie that McClendon was not allowed to touch her in that way.
28. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Mackie's breasts and crotch area.
29. McClendon would alternately offer to promote or threaten to fire Mackie and the other Complainants to get them to comply with his harassment.
30. By the end of the work day, McClendon's constant harassment left Mackie feeling stressed and suffering from headaches. It also caused tension and arguments with her spouse.
31. Eventually the hostile and offensive work environment became unbearable for Mackie and she resigned on July 26, 2013.

Complainant Wieczorek

32. McClendon constantly commented on the bodies of Wieczorek, Mackie and Fullard. He said that they were "well-proportioned" and had "nice figures". He also told Wieczorek that she had a nice chest.
33. On May 14, 2013 McClendon called Wieczorek and Griffie into his office and asked them if they shared men or had three way sex.
34. One day McClendon asked Wieczorek to follow him so that he could show her the PR office. He opened the door to the PR office and said, "This is where you are going to give me a lap dance." Wieczorek shook her head no and left. Complainant Mackie witnessed this incident.
35. Later that day McClendon asked Wieczorek, Griffie, Mackie and a co-worker named Chuck to go to the physical therapy room. Once there he told Wieczorek to bounce on an exercise ball. McClendon said, "This is where men watch you bounce." Wieczorek got up off the ball and left. Wieczorek felt repulsed and disgusted by these incidents and cried for days.
36. On June 13, 2013 McClendon called Wieczorek into his office. He told her that he had a gun in his car and that he could personally take care of any problems she might have.
37. On June 15, 2013 McClendon told Wieczorek that he could not look at her because she reminded him of the "white devil", McClendon's name for his wife.
38. Sometime between June 18, 2013 and June 21, 2013 McClendon called Wieczorek into his office and wanted to give her his personal telephone number. He asked Wieczorek to call him at night when she got home because he cared about her and was worried about her.
39. On June 19, 2013 McClendon rubbed Wieczorek's shoulders. Wieczorek told him to stop because it made her uncomfortable.
40. On July 1, 2013 when Wieczorek came back from her break, her pillow was missing. McClendon told her that he had taken it. A few minutes later McClendon called Wieczorek into his office and asked her why she needed the pillow. She said that she was having cramps with her period and that the pillow provided comfort. McClendon then rubbed up against her putting his hands on her right hip and stomach area. Wieczorek grabbed her pillow and left.
41. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Wieczorek's breasts and crotch area.

42. As a result of the sexual harassment Wieczorek began experiencing nausea and chronic headaches that required therapy.
43. McClendon terminated Wieczorek on July 16, 2013. A week or two before firing her, McClendon had asked Wieczorek what she was doing over the weekend. Wieczorek said that she was going out with her sister. McClendon handed her \$20 for going out and told Wieczorek to ask him for whatever she needed in the future. Wieczorek felt that McClendon expected something sexual in return for the money, and that she was terminated because she did not give him what he wanted.

Complainant Fullard

44. McClendon constantly commented on Fullard's body and attire. He told her she was "well-proportioned" and had a "nice figure".
45. On June 27, 2013 McClendon came up behind Fullard, said that she looked tense and started to massage her shoulders. As he was giving her a massage, he pressed his penis against Fullard's back. Fullard told him that she did not like what he was doing. McClendon replied that it was his building and that she could get out if she did not like it. Complainant Wieczorek witnessed this incident.
46. On July 9, 2013 at the morning employee meeting McClendon announced that he was Muslim and that it was Ramadan, so he had to fast and could not even have sex with his wife. Fullard told McClendon that it made her uncomfortable for him to talk about his sex life. McClendon replied that he could say whatever he wanted to. Complainants Mackie and Wieczorek were also at the meeting and were made uncomfortable by his statement.
47. On July 11, 2013 McClendon pulled Fullard into his office and attempted to make conversation with her about how she was feeling and how things were going at home. All the while McClendon was winking at Fullard and groping his penis.
48. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Fullard's breasts and crotch area.
49. The last time she got paid, McClendon told Fullard that she had to pick up her check at another location an hour away even though he knew that Fullard did not have transportation. McClendon kept pressuring Fullard to let him give her a ride in his car to pick up her check. Fullard did not want to get in McClendon's car because of his harassment and also because McClendon often told everyone he kept a gun in his car.

50. As a result of this harassment Fullard began to suffer dizzy spells and have trouble concentrating and functioning. It also caused tension and arguments between Fullard and her fiancée. Eventually the hostile and offensive work environment became unbearable for Fullard and she resigned on July 19, 2013.

All Complainants

51. In addition to being harassed themselves, Complainants witnessed McClendon sexually harass and offensively touch all of his female employees on a daily basis. This pervasive atmosphere of harassment contributed to the hostile and offense work environment.

52. All of the Complainants experienced and witnessed McClendon regularly sexually harass all of his female employees in the following ways:

- a. By massaging the backs, necks and shoulders of female employees while rubbing his penis against their bodies;
- b. By standing behind seated female employees and looking down their shirts.
- c. By opening the door to the women's restroom every time a female employee exited and sniffing the air;
- d. By telling female employees how to dress and only complimenting female employees who wore short skirts or low cut tops;
- e. By publicly critiquing the bodies of his female employees and pointing out which ones were "well-proportioned" and which ones were "fat";
- f. By calling overweight female employees "fat" and publicly stating that he could not work with fat people and wanted to shoot fat people;
- g. By publicly calling female employees "bitches" and "barn animals"; and
- h. By blocking doorways with his body so that female employees would have to brush against his penis to cross the threshold.

53. Specifically, on June 26, 2013 Complainants Mackie, Wleczorek and Fullard saw McClendon come up behind a female co-worker named Dorine Emereck and massage her shoulders. Emereck seemed uncomfortable.

54. On July 10, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon massaging Dorine Emereck's shoulders. During their break, Wieczorek asked Emereck if McClendon often massaged her. Emereck said that he did.
55. On July 15, 2013 Mackie, Wieczorek and Fullard witnessed McClendon call two new female employees named Danielle and Tracey into his office. They saw McClendon give Danielle and Tracey back and shoulder massages. At one point McClendon pulled down Tracey's outer top so that he could touch her skin.
56. All Complainants also experienced and witnessed McClendon use fear, intimidation, abusive language, the offer and then withdrawal of promotions, and the threat of termination to make his female employees comply with his harassment.
57. In June 2013, Complainants Griffie and Wieczorek went to apply for jobs at another call center. McClendon's daughter happened to work at the other call center and called McClendon when she recognized Griffie and Wieczorek. McClendon told his daughter not to hire them. Upon their return, McClendon threatened to blackball Griffie from other jobs in telemarketing.
58. On June 28, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon scream and curse at a female employee named Libby Eber-Smith because it was raining outside and there was mud on her shoes. McClendon made Eber-Smith get on her hands and knees and scrub the floor. McClendon also raised his hand as if he was going to smack Eber-Smith in the face. Eber-Smith reported to Complainants that McClendon actually hit her later that day.
59. On July 2, 2013 Complainants Mackie, Wieczorek and Fullard witnessed McClendon screaming insults Libby Eber-Smith. While Complainants were on break, Eber-Smith locked herself in the bathroom. When Complainants came back from break, McClendon was standing outside the bathroom door. When Eber-Smith finally came out of the bathroom she could not work because she was crying. McClendon said that he treated Eber-Smith badly because she was disabled. McClendon told everyone that he would do whatever he wanted to do and that he had a gun and would use it.
60. On July 17, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon call a female employee named Tracey into his office. When Tracey came out she was bawling. Tracey told Complainants that McClendon had told her that she was weak and needed to toughen-up. To prevent the women from talking about his harassment McClendon came out of his office and told everyone not ask "why" if they someone crying.
61. All Complainants heard McClendon repeatedly say that he was willing to beat people up or kill people and that he kept a gun in his car.

62. On June 25, 2013 all Complainants went to McClendon's supervisor, Clinic Director Dr. Gary T. Heironimus, to complain about McClendon's sexual harassment, offensive touching and intimidation. As soon as Complainants said that they were there to discuss McClendon's behavior, Dr. Heironimus cut them off and refused to listen to any of the details. Dr. Heironimus told them, "You need to talk to Bob yourselves." Complainant Mackie replied to Dr. Heironimus that he was McClendon's boss and needed to take care of the problem. Dr. Heironimus refused to listen to the substance of their complaints.
63. McClendon's conduct and the conduct of Scott Medical Center in authorizing McClendon to act in the manner he did, violated Title VII of the Civil Rights Act and the Americans with Disability Act.
64. Complainants Griffie, Mackie, Wieczorek and Fullard request this Commission assume jurisdiction over their Charge, and cross-file the Charge with the Pennsylvania Human Relations Commission.

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EEOC PITTSBURGH AREA OFFICE
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I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

8/23/13

(Date Signed)

Allyssa Griffie

Allyssa Griffie

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Aug. 12, 2013
(Date Signed)

Donna Mackie
Donna Mackie

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8/23/13
(Date Signed)

Kaitlyn Wieczorek
Kaitlyn Wieczorek

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EOC PITTSBURGH AREA OFFICE
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8-12-13
(Date Signed)

Brittany Fullard
Brittany Fullard

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U.S. Equal Employment Opportunity Commission

Chief Executive Officer
 Human Resources Department
 SCOTT MEDICAL CENTER
 2275 Swallow Hill Road
 Building 900
 Pittsburgh, PA 15220

PERSON FILING CHARGE

Kaitlyn Wieczorek

THIS PERSON (check one or both)



Claims To Be Aggrieved



Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

533-2013-01349

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

- Title VII of the Civil Rights Act (Title VII) The Equal Pay Act (EPA) The Americans with Disabilities Act (ADA)
- The Age Discrimination in Employment Act (ADEA) The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1. No action is required by you at this time.
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Telephone (412) 395-5865

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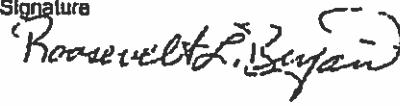
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Date	Name / Title of Authorized Official	Signature
November 7, 2013	Roosevelt L. Bryant, Acting Director	

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ALLYSSA GRIFFIE, : EEOC Charge No. 533-2013-01349
DONNA MACKIE, :
KAITLYN WIECZOREK, and :
BRITTANY FULLARD, :
Complainants, :
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SCOTT MEDICAL HEALTH CENTER: :
Respondent :
:

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2013 AUG 26 PM 4 52

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22. On June 26, 2013 McClendon fired Griffie because she was "weak and fat." All Complainants heard McClendon say that he fired Griffie because she was "weak and fat" and because he only wanted tight and fit women working for him. Complainants Mackie, Wieczorek and Fullard all heard McClendon continue to refer to Griffie as "the fat lady" after her termination.

Complainant Mackie

23. Mackie began working at Scott Medical Center on May 6, 2013. About three days later McClendon offered her a promotion because "she looked like she could handle *any* job." McClendon then put his hands on Mackie's shoulders, brought his hands around and pulled the front of her shirt together. He told her that she needed to close the front of her shirt even though it was not revealing. As he did this his hands brushed her breasts.
24. On June 19, 2013 McClendon came up behind Mackie and started rubbing and massaging her back and shoulders.
25. On June 27, 2013 Mackie was going out the door of the office for her break McClendon walked towards her and blocked the door so that his penis brushed against her side as she passed.
26. Later that day, McClendon asked Mackie to change a light bulb in the ceiling because Mackie was taller. He gave Mackie a chair to stand on. As Mackie was standing on the chair about to screw in the new bulb, McClendon put his hand on her thigh. Mackie was so shocked that she dropped and broke the bulb, got down off the chair and went back to her seat. Complainants Wieczorek and Fullard and co-workers Dorine Emerech and Libby Ebery-Smith witnessed this incident.
27. On July 8, 2013 McClendon came up behind Mackie and started massaging her shoulders and telling her to relax. McClendon then palmed Mackie's buttock and said that Mackie was sexy, well-proportioned and had a nice butt. Mackie pulled away from him. Complainants Wieczorek and Fullard witnessed this incident Co-worker Anita Harris also saw this incident and told Mackie that McClendon was not allowed to touch her in that way.
28. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Mackie's breasts and crotch area.
29. McClendon would alternately offer to promote or threaten to fire Mackie and the other Complainants to get them to comply with his harassment.
30. By the end of the work day, McClendon's constant harassment left Mackie feeling stressed and suffering from headaches. It also caused tension and arguments with her spouse.
31. Eventually the hostile and offensive work environment became unbearable for Mackie and she resigned on July 26, 2013.

Complainant Wieczorek

32. McClendon constantly commented on the bodies of Wieczorek, Mackie and Fullard. He said that they were "well-proportioned" and had "nice figures". He also told Wieczorek that she had a nice chest.
33. On May 14, 2013 McClendon called Wieczorek and Griffie into his office and asked them if they shared men or had three way sex.
34. One day McClendon asked Wieczorek to follow him so that he could show her the PR office. He opened the door to the PR office and said, "This is where you are going to give me a lap dance." Wieczorek shook her head no and left. Complainant Mackie witnessed this incident.
35. Later that day McClendon asked Wieczorek, Griffie, Mackie and a co-worker named Chuck to go to the physical therapy room. Once there he told Wieczorek to bounce on an exercise ball. McClendon said, "This is where men watch you bounce." Wieczorek got up off the ball and left. Wieczorek felt repulsed and disgusted by these incidents and cried for days.
36. On June 13, 2013 McClendon called Wieczorek into his office. He told her that he had a gun in his car and that he could personally take care of any problems she might have.
37. On June 15, 2013 McClendon told Wieczorek that he could not look at her because she reminded him of the "white devil", McClendon's name for his wife.
38. Sometime between June 18, 2013 and June 21, 2013 McClendon called Wieczorek into his office and wanted to give her his personal telephone number. He asked Wieczorek to call him at night when she got home because he cared about her and was worried about her.
39. On June 19, 2013 McClendon rubbed Wieczorek's shoulders. Wieczorek told him to stop because it made her uncomfortable.
40. On July 1, 2013 when Wieczorek came back from her break, her pillow was missing. McClendon told her that he had taken it. A few minutes later McClendon called Wieczorek into his office and asked her why she needed the pillow. She said that she was having cramps with her period and that the pillow provided comfort. McClendon then rubbed up against her putting his hands on her right hip and stomach area. Wieczorek grabbed her pillow and left.
41. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Wieczorek's breasts and crotch area.

42. As a result of the sexual harassment Wieczorek began experiencing nausea and chronic headaches that required therapy.
43. McClendon terminated Wieczorek on July 16, 2013. A week or two before firing her, McClendon had asked Wieczorek what she was doing over the weekend. Wieczorek said that she was going out with her sister. McClendon handed her \$20 for going out and told Wieczorek to ask him for whatever she needed in the future. Wieczorek felt that McClendon expected something sexual in return for the money, and that she was terminated because she did not give him what he wanted.

Complainant Fullard

44. McClendon constantly commented on Fullard's body and attire. He told her she was "well-proportioned" and had a "nice figure".
45. On June 27, 2013 McClendon came up behind Fullard, said that she looked tense and started to massage her shoulders. As he was giving her a massage, he pressed his penis against Fullard's back. Fullard told him that she did not like what he was doing. McClendon replied that it was his building and that she could get out if she did not like it. Complainant Wieczorek witnessed this incident.
46. On July 9, 2013 at the morning employee meeting McClendon announced that he was Muslim and that it was Ramadan, so he had to fast and could not even have sex with his wife. Fullard told McClendon that it made her uncomfortable for him to talk about his sex life. McClendon replied that he could say whatever he wanted to. Complainants Mackie and Wieczorek were also at the meeting and were made uncomfortable by his statement.
47. On July 11, 2013 McClendon pulled Fullard into his office and attempted to make conversation with her about how she was feeling and how things were going at home. All the while McClendon was winking at Fullard and groping his penis.
48. On July 15, 2013 the electricity went out at Scott Medical Center. During the two hours that the power was out, McClendon walked around the office shining a flashlight at the private parts of his female employees. McClendon repeatedly shone his flashlight on Fullard's breasts and crotch area.
49. The last time she got paid, McClendon told Fullard that she had to pick up her check at another location an hour away even though he knew that Fullard did not have transportation. McClendon kept pressuring Fullard to let him give her a ride in his car to pick up her check. Fullard did not want to get in McClendon's car because of his harassment and also because McClendon often told everyone he kept a gun in his car.

50. As a result of this harassment Fullard began to suffer dizzy spells and have trouble concentrating and functioning. It also caused tension and arguments between Fullard and her fiancée. Eventually the hostile and offensive work environment became unbearable for Fullard and she resigned on July 19, 2013.

All Complainants

51. In addition to being harassed themselves, Complainants witnessed McClendon sexually harass and offensively touch all of his female employees on a daily basis. This pervasive atmosphere of harassment contributed to the hostile and offense work environment.

52. All of the Complainants experienced and witnessed McClendon regularly sexually harass all of his female employees in the following ways:

- a. By massaging the backs, necks and shoulders of female employees while rubbing his penis against their bodies;
- b. By standing behind seated female employees and looking down their shirts.
- c. By opening the door to the women's restroom every time a female employee exited and sniffing the air;
- d. By telling female employees how to dress and only complimenting female employees who wore short skirts or low cut tops;
- e. By publicly critiquing the bodies of his female employees and pointing out which ones were "well-proportioned" and which ones were "fat";
- f. By calling overweight female employees "fat" and publicly stating that he could not work with fat people and wanted to shoot fat people;
- g. By publicly calling female employees "bitches" and "barn animals"; and
- h. By blocking doorways with his body so that female employees would have to brush against his penis to cross the threshold.

53. Specifically, on June 26, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon come up behind a female co-worker named Dorine Emereck and massage her shoulders. Emereck seemed uncomfortable.

54. On July 10, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon massaging Dorine Emereck's shoulders. During their break, Wieczorek asked Emereck if McClendon often massaged her. Emereck said that he did.
55. On July 15, 2013 Mackie, Wieczorek and Fullard witnessed McClendon call two new female employees named Danielle and Tracey into his office. They saw McClendon give Danielle and Tracey back and shoulder massages. At one point McClendon pulled down Tracey's outer top so that he could touch her skin.
56. All Complainants also experienced and witnessed McClendon use fear, intimidation, abusive language, the offer and then withdrawal of promotions, and the threat of termination to make his female employees comply with his harassment.
57. In June 2013, Complainants Griffie and Wieczorek went to apply for jobs at another call center. McClendon's daughter happened to work at the other call center and called McClendon when she recognized Griffie and Wieczorek. McClendon told his daughter not to hire them. Upon their return, McClendon threatened to blackball Griffie from other jobs in telemarketing.
58. On June 28, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon scream and curse at a female employee named Libby Eber-Smith because it was raining outside and there was mud on her shoes. McClendon made Eber-Smith get on her hands and knees and scrub the floor. McClendon also raised his hand as if he was going to smack Eber-Smith in the face. Eber-Smith reported to Complainants that McClendon actually hit her later that day.
59. On July 2, 2013 Complainants Mackie, Wieczorek and Fullard witnessed McClendon screaming insults Libby Eber-Smith. While Complainants were on break, Eber-Smith locked herself in the bathroom. When Complainants came back from break, McClendon was standing outside the bathroom door. When Eber-Smith finally came out of the bathroom she could not work because she was crying. McClendon said that he treated Eber-Smith badly because she was disabled. McClendon told everyone that he would do whatever he wanted to do and that he had a gun and would use it
60. On July 17, 2013 Complainants Mackie, Wieczorek and Fullard saw McClendon call a female employee named Tracey into his office. When Tracey came out she was bawling. Tracey told Complainants that McClendon had told her that she was weak and needed to toughen-up. To prevent the women from talking about his harassment McClendon came out of his office and told everyone not ask "why" if they someone crying.
61. All Complainants heard McClendon repeatedly say that he was willing to beat people up or kill people and that he kept a gun in his car.

62. On June 25, 2013 all Complainants went to McClendon's supervisor, Clinic Director Dr. Gary T. Heironimus, to complain about McClendon's sexual harassment, offensive touching and intimidation. As soon as Complainants said that they were there to discuss McClendon's behavior, Dr. Heironimus cut them off and refused to listen to any of the details. Dr. Heironimus told them, "You need to talk to Bob yourselves." Complainant Mackie replied to Dr. Heironimus that he was McClendon's boss and needed to take care of the problem. Dr. Heironimus refused to listen to the substance of their complaints.
63. McClendon's conduct and the conduct of Scott Medical Center in authorizing McClendon to act in the manner he did, violated Title VII of the Civil Rights Act and the Americans with Disability Act.
64. Complainants Griffie, Mackie, Wieczorek and Fullard request this Commission assume jurisdiction over their Charge, and cross-file the Charge with the Pennsylvania Human Relations Commission.

RECEIVED
EEOC PITTSBURGH AREA OFFICE
2013 AUG 26 PM 4 52

I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

8/23/13

(Date Signed)


Allyssa Griffie

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EEOC-PITTSBURGH AREA OFFICE
2013 AUG 26 PM 1:53

I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Aug. 12, 2013
(Date Signed)

Donna Mackie
Donna Mackie

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2013 AUG 26 PM 4:53

I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

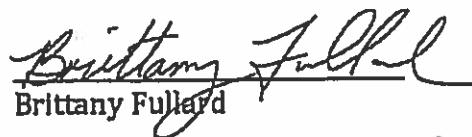
8/25/13
(Date Signed)

Kaitlyn Wleczorek
Kaitlyn Wleczorek

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EEOC PITTSBURGH AREA OFFICE
2013 AUG 26 PM 4:53

I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

8-12-13
(Date Signed)


Brittany Fullard

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EEOC PITTSBURGH AREA OFFICE
2013 AUG 26 PM 4:59



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Pittsburgh Area Office**

William S. Moorhead Federal Building
1000 Liberty Avenue, Room 1112
Pittsburgh, PA 15222

Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820

Pittsburgh Status Line: (866) 408-8075

Pittsburgh Direct Dial: (800) 395-5902

TTY: (412) 395-5904

FAX: (412) 395-5749

Website: www.eeoc.gov

NOTICE OF SETTLEMENT

This refers to the Charge of Employment Discrimination which has been received by the U.S. Equal Employment Opportunity Commission (EEOC). It is the policy of the Pittsburgh Area Office to attempt to negotiate a settlement for such a Charge. The EEOC Representative attempts to facilitate settlement discussions between the parties in the hopes of obtaining an agreement mutually satisfactory to the parties and the EEOC. If such a settlement is negotiated, the Commission will prepare a Settlement Agreement to be signed by all parties, including the EEOC.

Negotiated Settlement Agreements typically include the following:

- a) a description of the relief to be provided to the Charging Party as a result of the Agreement;
- b) means of monitoring to insure that the terms of the relief are met;
- c) a statement which expressly indicates that the Respondent is not acknowledging any violation of the statute(s) under which the Charge was filed;
- d) a clause prohibiting retaliation; and
- e) a waiver by the Charging Party of his/her private suit rights under the applicable statutes enforced by the EEOC.

In addition, a Settlement Agreement concludes EEOC's investigation of the subject charge. Such EEOC closure would eliminate the need thereafter for Respondent to prepare a position statement (See page #2 of this handout), respond to Requests for Information, make witnesses available or to otherwise respond to the Commission's investigation of that Charge.

Although Respondent will be contacted by an EEOC Representative to discuss the possibility of settlement, this office's increasing inventory has resulted in some delay before such settlement efforts can be initiated. However, if the Respondent at this time is interested in pursuing settlement, the Respondent's representative is invited to contact this office directly as a means of insuring expedited settlement discussions.

WHAT A POSITION STATEMENT SHOULD INCLUDE

PART I: GENERAL INFORMATION:

1. NAME AND ADDRESS OF THE ORGANIZATION:

State the correct name and address of the specific installation charged. If the mailing address is a P.O. Box number, provide the physical location of your installation by street address.

2. REPRESENTATIVE OF THE ORGANIZATION:

State the name, title, business address and business telephone number of the person with whom there should be communications relating to this matter.

3. KIND OF BUSINESS:

Briefly identify the primary function of the establishment charged (e.g., "automobile assembly"; "retail sale of men's clothing"; "banking and trust services"; etc.).

4. NUMBER OF EMPLOYEES:

State the number of persons (including supervisors and managers) employed at the specific installation charged and by all organization as a whole on the most recent payroll date. If the total number of employees is over fifty (50), approximations are acceptable.

EEO-1 REPORTS:

Please provide copies of your most recent EEO-1 Reports for the current and preceding two (2) years.

PART II: RESPONSE TO THE CHARGE:

The EEOC, an objective fact-finding agency, has made no determination on the merits of this charge. In order to facilitate a prompt investigation or resolution of this charge, you are requested to provide within the specified time frame (30 days) the general information above along with the following:

1. The facts and circumstances surrounding each alleged discriminatory act, and describe and explain your reasons for taking such actions. Provide as attachments any documents in support of your position.
2. Copies of the applicable policies, practices or procedures relating to the act alleged to be discriminatory.
3. Names and Job Titles of all officials who participated in or made decisions relative to the issues raised in the charge and what role was played by each named official.
4. The specific date (s), action (s) and location (s) applicable to each alleged discriminatory act and any consequent or subsequent action.
5. Names of witnesses to the alleged discriminatory acts other than those named in #3 above.
6. State whether this matter has been resolved, and if not, how the matter might amicably be resolved and your proposal for resolution.

EEOC RULES AND REGULATIONS

Section 1601.15 of the Commission's Procedural Regulations provides that persons charged with employment discrimination, such as yourself, may submit a statement of position or evidence with respect to the allegations contained in this charge.

The Commission's Recordkeeping and Reporting Requirements are set forth at 29 CFR, Part 1602 (see particularly § 1602.12 (a) below) for Title VII of the Civil Rights Act; 29 CFR, Part 1627, for the Age Discrimination in Employment Act; and 29 CFR, Part 1620 for the Equal Pay Act. These Regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. They also prescribe record retention periods. In most cases, three (3) years for basic payroll records and one year for personnel records. Questions regarding retention periods and the types of records to be retained should be resolved by reference to the regulations.

§ 1602.14 Preservation of records made or kept.

- (a) Where a charge of discrimination has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII, the respondent employer shall preserve all personnel records relevant to the charge or the action, which include personnel records relating to the charge, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person, and application forms or test papers completed by any unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected. The date of "final" disposition of the charge or action means the date of expiration of the statute of limitations within which the aggrieved person may bring an action in U. S. District Court, or where an action is brought against the employer either by the aggrieved person, the Commission, or by the Attorney General, the date on which the litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of the Civil Rights Act of 1964, as amended, and Section 4(d) of the Age Discrimination in Employment Act of 1967, as amended, states:

"It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this title."

The Equal Pay Act of 1963 contains similar provisions. Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although it is not necessary that you be represented by an attorney while we are handling this charge, you have a right, and may wish to retain an attorney to represent you. If you are represented by an attorney we request that you provide the Commission with your attorney's name, address/telephone number and that you ask your attorney to write to the Commission confirming such representation.

U.S. Equal Employment Opportunity Commission

Dr. Gary T. Heironimus
Clinic Director
SCOTT MEDICAL HEALTH CENTER P C
2275 Swallow Hill Road
Building 900
Pittsburgh, PA 15220

PERSON FILING CHARGE

Libby Eber

THIS PERSON (check one or both)



Claims To Be Aggrieved



Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

533-2014-00904

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

- Title VII of the Civil Rights Act (Title VII) The Equal Pay Act (EPA) The Americans with Disabilities Act (ADA)
- The Age Discrimination in Employment Act (ADEA) The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1. No action is required by you at this time.
2. Please call the EEOC Representative listed below concerning the further handling of this charge.
3. Please provide by 26-AUG-14 a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by
to
If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Frank E. Rodis,
Intake Supervisor

EEOC Representative

Telephone... (412) 395-5865

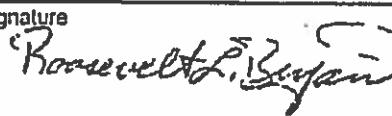
Pittsburgh Area Office
1000 Liberty Avenue
Room 1112
Pittsburgh, PA 15222
Fax: (412) 395-5749

Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

- Race Color Sex Religion National Origin Age Disability Retaliation Genetic Information Other

See enclosed copy of charge of discrimination. If you are not the person handling this matter
please contact the EEOC within seven (7) days,
with the correct person's name and address
who will be the contact person

Date	Name / Title of Authorized Official	Signature
July 31, 2014	Roosevelt L. Bryant, Acting Director	

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

LIBBY EBER, :
Complainant, : EEOC Charge No. 533-2014-00904
: :
: :
v. : Pennsylvania Commission on
: Human Relations Docket No.
SCOTT MEDICAL HEALTH CENTER:
: :
Respondent :
:

CHARGE OF DISCRIMINATION

1. Complainant Libby Eber, resides at:

681 Orchard Avenue, #1
Bellevue, PA 15202

EEOC ATTORNEY'S OFFICE
RECEIVED MAY 30 PM 2:55

2. The Respondent is Scott Medical Center, P.C. at the following address:

2275 Swallow Hill Road, Bldg. 900
Pittsburgh, PA 152220

3. Complainant Eber worked as a telephone appointment setter for Respondent Scott Medical Center.
4. Eber worked at Scott Medical Center for two separate periods of time. This Charge covers her second term of employment there from November 2012 until August 2013.
5. Complainants' direct supervisor was Call Center Director Robert McClendon.
6. McClendon subjected Eber to sexual harassment and unwanted touching so frequently and severely that it created a hostile and offensive work environment and resulted in adverse employment decisions being taken against her.
7. McClendon frequently massaged Eber's back, neck and shoulders. This touching was unwanted and made Eber uncomfortable. McClendon also often looked down Eber's shirt at her breasts.
8. Appointment setters had to clock-in using McClendon's computer. Normally he turned the computer to face away from him for employees to clock-in. One day,

Eber was late. McClendon made Eber come around to his side of the desk where he was sitting to clock-in. Eber had to go between McClendon, who was seated, and his desk to reach the computer. Eber had to bend over to use the computer. As Eber was clocking-in, McClendon stood up from his chair, rubbing his penis against Eber's buttocks. McClendon said, "Look at that tight little ass."

9. On one occasion, Eber went to a hockey game with another employee named Chuck. The next day, McClendon called Eber into his office and asked if she was "fucking Chuck." Eber said that she was not and that it was not appropriate to ask. McClendon insisted that Eber was having sex with Chuck and began repeatedly telling Eber, "You're fucking Chuck. You're fucking Chuck." McClendon made these comments so that other employees could hear them.
10. On a day when Eber wore a skirt to work, McClendon commented on how nice she looked and told her that she had to eat lunch with him. McClendon brought Eber lunch, but Eber did not eat with him. When she returned from lunch, McClendon said, "I didn't get to watch you eat your lunch."
11. McClendon told Eber that he was in love with her and told other employees that he loved Eber.
12. McClendon often commented on Eber's body. He repeatedly referred to Eber's "tight little ass."
13. On June 28, 2013 McClendon screamed and cursed at Eber because it was raining outside and there was mud on her shoes. McClendon made Eber get on her hands and knees and scrub the floor, all the while screaming profanities at her. McClendon raised his hand as if he was going to smack Eber-Smith in the face. Eber put her hand up to protect herself, and McClendon instead smacked her hand.
14. On July 2, 2013 McClendon again screamed insults and profanities at Eber. Eber locked herself in the bathroom. McClendon stood outside the bathroom door and continued to shout at Eber. When Eber finally came out of the bathroom she could not work because she was crying. McClendon told everyone in the call center that he treated Eber badly because she was disabled. McClendon told everyone that he would do whatever he wanted to do and that he had a gun and would use it.
15. Once, McClendon was angry with Eber and made her leave work. As she was walking away, McClendon followed her in his car. He kept screaming and yelling at her, trying to get her to get into his car, but Eber refused. Eventually he stopped his car in the road, blocking traffic. He told her to get into his car or he would suspend her for one week. Feeling she had no choice, Eber got into the back seat of McClendon's car. She was afraid and began to cry. McClendon

continued to scream and yell at her. He said, "What's it gonna take? A bullet to your head." This comment made Eber fear for her safety.

16. McClendon used intimidation and adverse employment actions to make Eber endure his harassment. McClendon's pattern was to find an employee's weak spot and use it against her. When Eber was not cooperative or complained about the harassment he would write her up on false charges and suspend her. McClendon would threaten to write her up on a weekly basis. McClendon knew that Eber was a single mom and could not afford to be suspended and without income. McClendon would tell her to sign the write-up or he would fire her. When Eber would question the veracity of the write-up, McClendon would say, "I can do whatever the fuck I want."
17. Eber went to McClendon's supervisor, Clinic Director Dr. Gary T. Heironimus, to complain about McClendon's sexual harassment, offensive touching and intimidation several times. McClendon would call up to Dr. Heironimus' office and tell Dr. Heironimus not to talk to Eber. On several occasions, Eber waited up an hour or two outside Dr. Heironimus' office, but the secretary would never let her in to see Dr. Heironimus. After Eber went to see Dr. Heironimus, McClendon began treating her even worse.
18. McClendon told Eber that if another job called looking for references, he would tell them that Eber didn't "know how to shut her fucking mouth. I can do whatever the fuck I want" Eber had also overheard McClendon give negative references to other employees who had applied for other jobs.
19. The first week of August 2013, McClendon had Eber transferred to Scott Medical's Wexford office and reduced her pay by \$1 per hour. Eber was terminated the following week.
20. After she was terminated, McClendon began calling her repeatedly. Eber did not answer. Eventually, Eber had to have her phone number changed to prevent the calls.
21. In addition to being harassed herself, Eber witnessed McClendon sexually harass and offensively touch all of his female employees on a daily basis. This pervasive atmosphere of harassment contributed to the hostile and offense work environment.
22. Eber experienced and witnessed McClendon regularly sexually harass all of his female employees in the following ways:
 - a. By massaging the backs, necks and shoulders of female employees while rubbing his penis against their bodies;

- b. By standing behind seated female employees and looking down their shirts.
 - c. By opening the door to the women's restroom every time a female employee exited and sniffing the air;
 - d. By telling female employees how to dress and only complimenting female employees who wore short skirts or low cut tops;
 - e. By publicly critiquing the bodies of his female employees and pointing out which ones were "well-proportioned" and which ones were "fat";
 - f. By calling overweight female employees "fat" and publicly stating that he could not work with fat people and wanted to shoot fat people;
 - g. By publicly calling female employees "bitches" and "barn animals"; and
 - h. By blocking doorways with his body so that female employees would have to brush against his penis to cross the threshold.
23. Eber also experienced and witnessed McClendon use fear, intimidation and abusive language and threats of suspension or termination to make his female employees comply with his harassment.
24. Eber heard McClendon repeatedly say that he was willing to beat people up or kill people and that he kept a gun in his car.
25. Eber once saw McClendon pull a gun on a male employee who had been fired.
26. McClendon's conduct and the conduct of Scott Medical Center in authorizing McClendon to act in the manner he did, violated Title VII of the Civil Rights Act. The hostile work environment created by McClendon was of a continuous recurring nature. Moreover, McClendon had the authority to hire and fire and was therefore a supervisor.
27. Scott Medical had no policy or postings addressing the issue of sexual harassment.
28. Complainant Eber requests this Commission assume jurisdiction over their Charge, and cross-file the Charge with the Pennsylvania Human Relations Commission.

I hereby verify that the statements contained in this Charge are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

5-28-14
Date Signed

Libby Eber
Libby L. Eber

RECEIVED
FCC PITTSBURGH AREA OFFICE
2014 MAY 30 PM 2:53



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Pittsburgh Area Office**

William S. Moorhead Federal Building
1000 Liberty Avenue, Room 1112
Pittsburgh, PA 15222

Intake Information Group: (800) 669-4000

Intake Information Group TTY: (800) 669-6820

Pittsburgh Status Line: (866) 408-8075

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FAX: (412) 395-5749

Website: www.eeoc.gov

NOTICE OF SETTLEMENT

This refers to the Charge of Employment Discrimination which has been received by the U.S. Equal Employment Opportunity Commission (EEOC). It is the policy of the Pittsburgh Area Office to attempt to negotiate a settlement for such a Charge. The EEOC Representative attempts to facilitate settlement discussions between the parties in the hopes of obtaining an agreement mutually satisfactory to the parties and the EEOC. If such a settlement is negotiated, the Commission will prepare a Settlement Agreement to be signed by all parties, including the EEOC.

Negotiated Settlement Agreements typically include the following:

- a.) a description of the relief to be provided to the Charging Party as a result of the Agreement;
- b.) means of monitoring to insure that the terms of the relief are met;
- c.) a statement which expressly indicates that the Respondent is not acknowledging a violation of the statute(s) under which the Charge was filed;
- d.) a clause prohibiting retaliation; and
- e.) a waiver by the Charging Party of his/her private suit rights under the applicable statutes enforced by the EEOC.

In addition, a Settlement Agreement includes EEOC's investigation of the subject charge. Such EEOC closure would eliminate the need thereafter for Respondent to prepare a position statement (see page #2 of this handout), respond to Requests for Information, make witnesses available or to otherwise respond to the Commission's investigation of that Charge.

Although Respondent will be contacted by an EEOC Representative to discuss the possibility of settlement, this office's increasing inventory has resulted in some delay before such settlement efforts can be initiated. However, if the Respondent at this time is interested in pursuing settlement, the Respondent's representative is invited to contact this office directly as a means of insuring expedited settlement discussions.

WHAT A POSITION STATEMENT SHOULD INCLUDE

PART I: GENERAL INFORMATION:

1. NAME AND ADDRESS OF THE ORGANIZATION:

State the correct name and address of the specific installation charged. If the mailing address is a P.O. Box number, provide the physical location of your installation by street address.

2. REPRESENTATIVE OF THE ORGANIZATION:

State the name, title, business address and business telephone number of the person with whom there should be communications relating to this matter.

3. KIND OF BUSINESS:

Briefly identify the primary function of the establishment charged (e.g., "automobile assembly"; "retail sale of men's clothing"; "banking and trust services", etc.)

4. NUMBER OF EMPLOYEES:

State the number of persons (including supervisors and managers) employed at the specific installation charged and by all organizations as a whole on the most recent payroll date. If the total number of employees is over fifty (50), approximations are acceptable.

EEO-1 REPORTS:

Please provide copies of your most recent EEO-1 reports for the current and preceding two (2) years.

PART II: RESPONSE TO THE CHARGE:

The EROC, an objective fact finding agency, has made no determination on the merits of this charge. In order to facilitate a prompt investigation or resolution of this charge, you are requested to provide, within the specified time frame (60 days) the general information above along with the following:

1. The facts and circumstances surrounding each alleged discriminatory act, and describe and explain your reasons for taking such actions. Provide as attachments any documents in support of your position.
2. Copies of the applicable policies, practices or procedures relating to the act alleged to be discriminatory.
3. Names and Job Titles of all officials who participated in or made decisions relative to the issues raised in the charge and what role was played by each named official.
4. The specific date(s), action(s) and location(s) applicable to each alleged discriminatory act and any consequent or subsequent action.
5. Names of witnesses to the alleged discriminatory acts other than those named in #3 above.
6. State whether this matter has been resolved, and if not, how the matter might amicably be resolved and your proposal for resolution.

[EEOC RULES AND REGULATIONS]

Section 1601.15 of the Commission's Procedural Regulations provides that persons charged with employment discrimination, such as yourself, may submit a statement of position or evidence with respect to the allegations contained in this charge.

The Commission's Recordkeeping and Reporting Requirements are set forth at 29 CFR, Part 1602 (see particularly § 1602.12 (a) below) for Title VII of the Civil Rights Act of 1964; 29 CFR, Part 1622, for the Age Discrimination in Employment Act; and 29 CFR, Part 1620 for the Equal Pay Act. These Regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. They also prescribe record retention periods—in most cases three (3) years for basic payroll records and one year for personnel records. Questions regarding retention periods and the types of records to be retained should be resolved by reference to the regulations.

§ 1602.14 Preservation of records made or kept.

- (a) Where a charge of discrimination has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII, the respondent employer shall preserve all personnel records relevant to the charge or the action. These personnel records, relevant to the charge, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person, and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same positions that for which the aggrieved person applied and was rejected. The date of "final disposition of the charge or action" means the date of expiration of the statutory period within which the aggrieved person may bring an action in U.S. District Court, or where no action is brought against the employer either by the aggrieved person, the Commission, or by the Attorney General, the date on which the litigation is terminated.

[NOTICE OF NON-RETALIATION REQUIREMENTS]

Section 704(a) of the Civil Rights Act of 1964, as amended, and Section 7(d) of the Age Discrimination in Employment Act of 1967, as amended, states:

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, or for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member because of or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted or participated in any manner (including a deposition, proceeding or hearing under this title).

The Equal Pay Act of 1963 contains similar provisions. Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made.

[NOTICE REGARDING REPRESENTATION BY ATTORNEYS]

Although it is not necessary that you be represented by an attorney while we are handling this charge, you have a right, and may wish to retain an attorney to represent you. If you are represented by an attorney we request that you provide the Commission with your attorney's name, address/telephone number and that you ask your attorney to write to the Commission confirming such representation.



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TTY (412) 395-5904
FAX (412) 395-5749
Website: www.eeoc.gov

Brittany Fullard
444 Robinson Street
Pittsburgh, PA 15140

v.

Charge No. 533-2013-01350

Scott Medical Health Center, PC
2275 Swallow Hill Road, Building 900
Pittsburgh, PA 15220

DETERMINATION

I issue the following determination as to the merits of this charge. Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and all requirements for coverage have been met.

Charging Party alleged that she was discriminated against because of her sex, female, when she was repeatedly subjected to unwelcome physical and verbal sexual harassment during her employment as a telephone appointment setter, which began on June 17, 2013. Because the work environment became so intolerable she resigned from her position on July 17, 2013.

Respondent denied that Charging Party was subjected to sexual harassment, and denied that Charging Party complained about such harassment. Respondent denied that it was aware of the alleged harassment. Respondent contended that Charging Party voluntarily quit her employment.

Investigation revealed that Charging Party and other employees were repeatedly subjected to unwelcome, offensive sexual comments by Charging Party's supervisor Robert McClendon, Telemarketing Manager. McClendon is a supervisor for purposes of Title VII, in that he had tangible employment action authority regarding employees in his department, including but not limited to hiring and firing. McClendon constantly commented on Charging Party's body and clothing, and talked about his sex life with his wife. McClendon also asked Charging Party about her own home life, while winking at her and groping his penis. The verbal harassment occurred on a daily or weekly basis. Charging Party was also subjected to unwelcome, offensive sexual touching by McClendon. McClendon massaged her shoulders while pressing his penis into her back. McClendon's harassment created a work environment that was both subjectively and objectively hostile and intolerable because of sex, female. His harassment culminated in tangible employment actions, i.e., discharge because of sex and conduct protected under Section 704(a) of Title VII, regarding a number of his victims, including the Charging Party. In addition, Respondent did not take action reasonably calculated to prevent and correct the harassing conduct. Charging Party and others objected to the harassing conduct directly to McClendon, but the conduct continued. Upper level management, including human resources and the President/Chief Executive Officer, had notice of McClendon's conduct but did nothing to stop it. Investigation also revealed that although Respondent had a written sexual harassment policy, it was inadequate and was not enforced. Respondent's failure to engage in prompt and effective action in response to the ongoing harassment resulted in Charging Party's constructive discharge when she quit on or about July 19, 2013.

Investigation revealed that at least two other, aggrieved female employees who did not file charges of discrimination were also subjected to the above-referenced Title VII violations.

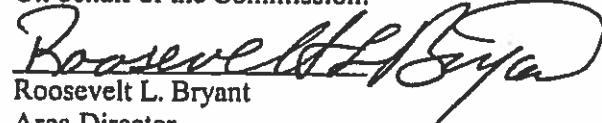
Investigation also revealed that McClendon harassed a male employee because of sex, specifically and repeatedly referring to the male employee as a "faggot," and repeatedly asking the male employee about the employee's sexual experiences and preferences. The investigation revealed that McClendon targeted this male employee because he did not conform to what McClendon believed was acceptable or expected behavior for a male and because of his associations with persons of the same sex rather than the opposite sex. The harassment created a work environment that was both subjectively and objectively hostile and intolerable because of sex, male. The male employee complained about McClendon's conduct directly to the President/Chief Executive Officer, who shrugged it off and took no action at all to stop the harassment, which continued. Respondent's failure to engage in prompt and effective action in response to the ongoing harassment resulted in the male employee's constructive discharge when he quit in August 2013.

I find reasonable cause to believe that Respondent has violated Title VII by subjecting Charging Party and a class of other aggrieved employees to harassment because of sex in violation of Title VII. I further find reasonable cause to believe that Respondent subjected Charging Party to constructive discharge because of sex and conduct protected under Section 704(a) of Title VII. I further find reasonable cause to believe that Respondent subjected a class of aggrieved employees to constructive discharge and discharge because of sex and conduct protected under Section 704(a) of Title VII.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the Respondent to join with it in reaching a just resolution of this matter. If the Respondent declines to discuss settlement or when for any other reason a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. The confidentiality provisions of the statute and Commission Regulations apply to information obtained during conciliation. The Commission representative will contact each party in the near future to begin conciliation.

7-22-15
Date

On behalf of the Commission:


Roosevelt L. Bryant
Area Director



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Pittsburgh Area Office**

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1000 Liberty Avenue, Room 1112
Pittsburgh, PA 15222

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Pittsburgh Direct Dial: (412) 395-5902
TTY (412) 395-5904
FAX (412) 395-5749
Website: www.eeoc.gov

Allyssa Griffie
340 Midland Avenue Rear
Midland, PA 15059

v.

Charge No. 533-2013-01344

Scott Medical Health Center, PC
2275 Swallow Hill Road, Building 900
Pittsburgh, PA 15220

DETERMINATION

I issue the following determination as to the merits of this charge. Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and all requirements for coverage have been met.

Charging Party alleged that she was discriminated against because of her sex, female, when she was repeatedly subjected to unwelcome physical and verbal sexual harassment during her employment as a telephone appointment setter, which began on May 8, 2013. After enduring nearly daily sex-based harassment, and witnessing similar conduct aimed at other employees, for a period of months, Charging Party was discharged from her employment.

Respondent denied Charging Party was subjected to sexual harassment, and denied that Charging Party complained about such harassment. Respondent denied that it was aware of the alleged harassment. Respondent contended that Charging Party was discharged for poor performance on June 24, 2013.

Investigation revealed that Charging Party and other employees were repeatedly subjected to unwelcome, offensive sexual comments by Charging Party's supervisor Robert McClendon, Telemarketing Manager. McClendon is a supervisor for purposes of Title VII, in that he had tangible employment action authority regarding employees in his department, including but not limited to hiring and firing. McClendon regularly made comments about Charging Party's body and clothing, and referred to other female employees as bitches and whores. The verbal harassment occurred on a daily or weekly basis. Charging Party was also subjected to unwelcome, offensive sexual touching by McClendon. McClendon rubbed her shoulders, and insisted on rubbing balm onto her head and chest. McClendon's harassment created a work environment that was both subjectively and objectively hostile and intolerable because of sex, female. His harassment culminated in tangible employment actions, i.e., discharge because of sex and conduct protected under Section 704(a) of Title VII, regarding a number of his victims, including the Charging Party. In addition, Respondent did not take action reasonably calculated to prevent and correct the harassing conduct. Charging Party and others objected to the harassing conduct directly to McClendon, but the conduct continued. Upper level management, including human resources and the President/Chief Executive Officer, had notice of McClendon's conduct but did nothing to stop it. Investigation also revealed that although Respondent had a written sexual harassment policy, it was inadequate and was not enforced.

The evidence revealed that Charging Party engaged in protected activity by objecting to McClendon's conduct and asking him to stop. The evidence also reveals that McClendon made the decision to discharge Charging Party, and that the discharge was in retaliation for Charging Party's protest and refusal to acquiesce to the harassment.

Investigation revealed that at least three other, aggrieved female employees who did not file charges of discrimination were also subjected to the above-referenced Title VII violations.

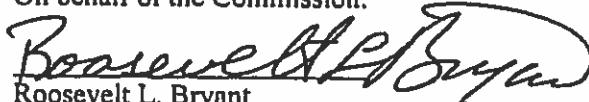
Investigation also revealed that McClendon did not limit his unwelcome and offensive harassing conduct to female employees, but also harassed a male employee because of sex, specifically and repeatedly referring to the male employee as a "faggot," and repeatedly asking the male employee about the employee's sexual experiences and preferences. The investigation revealed that McClendon targeted this male employee because he did not conform to what McClendon believed was acceptable or expected behavior for a male and because of his association with persons of the same sex rather than the opposite sex. The harassment created a work environment that was both subjectively and objectively hostile and intolerable because of sex, male. The male employee complained about McClendon's conduct directly to the President/Chief Executive Officer, who shrugged it off and took no action at all to stop the harassment, which continued. Respondent's failure to engage in prompt and effective action in response to the ongoing harassment resulted in the male employee's constructive discharge when he quit in August 2013.

I find reasonable cause to believe that Respondent has violated Title VII by subjecting Charging Party and a class of other aggrieved employees to harassment because of sex in violation of Title VII. I further find reasonable cause to believe that Respondent subjected Charging Party to discharge because of sex and conduct protected under Section 704(a) of Title VII. I further find reasonable cause to believe that Respondent subjected a class of aggrieved employees to constructive discharge and discharge because of sex and conduct protected under Section 704(a) of Title VII.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the Respondent to join with it in reaching a just resolution of this matter. If the Respondent declines to discuss settlement or when for any other reason a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. The confidentiality provisions of the statute and Commission Regulations apply to information obtained during conciliation. The Commission representative will contact each party in the near future to begin conciliation.

7-22-15
Date

On behalf of the Commission:


Roosevelt L. Bryant
Area Director



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Pittsburgh, PA 15222

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Intake Information Group TTY: (800) 669-6820
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Pittsburgh Direct Dial: (412) 395-5902
TTY (412) 395-5904
FAX (412) 395-5749
Website: www.eeoc.gov

Donna Mackie
3414 Iowa Street
Pittsburgh, PA 15219

v.

Charge No. 533-2013-01346

Scott Medical Health Center, PC
2275 Swallow Hill Road, Building 900
Pittsburgh, PA 15220

DETERMINATION

I issue the following determination as to the merits of this charge. Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and all requirements for coverage have been met.

Charging Party alleged that she was discriminated against because of her sex, female, when she was repeatedly subjected to unwelcome physical and verbal sexual harassment during her employment as a telephone appointment setter, which began on May 8, 2013. Because the work environment became so intolerable she resigned from her position on July 26, 2013.

Respondent denied that Charging Party was subjected to sexual harassment, and denied that Charging Party complained about such harassment. Respondent denied that it was aware of the alleged harassment. Respondent contended that Charging Party voluntarily quit her employment.

Investigation revealed that Charging Party and other employees were repeatedly subjected to unwelcome, offensive sexual comments by Charging Party's supervisor Robert McClendon, Telemarketing Manager. McClendon is a supervisor for purposes of Title VII, in that he had tangible employment action authority regarding employees in his department, including but not limited to hiring and firing. The verbal harassment occurred on a daily or weekly basis. Charging Party was also subjected to unwelcome, offensive sexual touching by McClendon. McClendon pulled the front of her shirt together, brushing her breasts; massaged her back and neck; put his hand on her thigh; brushed against her so that his penis brushed against her side as she passed by; and palmed her buttock while telling her she was sexy and had a "nice butt." McClendon's harassment created a work environment that was both subjectively and objectively hostile and intolerable because of sex, female. His harassment culminated in tangible employment actions, i.e., discharge because of sex and conduct protected under Section 704(a) of Title VII, regarding a number of his victims, including the Charging Party. In addition,

Respondent did not take action reasonably calculated to prevent and correct the harassing conduct. Charging Party and others objected to the harassing conduct directly to McClendon, but the conduct

continued. Upper level management, including human resources and the President/Chief Executive officer, had notice of McClendon's conduct but did nothing to stop it. Investigation also revealed that although Respondent had a written sexual harassment policy, it was inadequate and was not enforced. Respondent's failure to engage in prompt and effective action in response to the ongoing harassment resulted in Charging Party's constructive discharge when she quit on or about July 26, 2013.

Investigation revealed that at least three other aggrieved female employees who did not file charges of discrimination were also subjected to the above-referenced Title VII violations.

Investigation also revealed that McClendon harassed a male employee because of sex, specifically and repeatedly referring to the male employee as a "faggot," and repeatedly asking the male employee about the employee's sexual experiences and preferences. The investigation revealed that McClendon targeted this male employee because he did not conform to what McClendon believed was acceptable or expected behavior for a male and because of his association with members of the same sex rather than the opposite sex. The harassment created a work environment that was both subjectively and objectively hostile and intolerable because of sex, male. The male employee complained about McClendon's conduct directly to the President/Chief Executive Officer, who shrugged it off and took no action at all to stop the harassment, which continued. Respondent's failure to engage in prompt and effective action in response to the ongoing harassment resulted in the male employee's constructive discharge when he quit in August 2013.

I find reasonable cause to believe that Respondent has violated Title VII by subjecting Charging Party and a class of other aggrieved employees to harassment because of sex in violation of Title VII. I further find reasonable cause to believe that Respondent subjected Charging Party to constructive discharge because of sex and conduct protected under Section 704(a) of Title VII. I further find reasonable cause to believe that Respondent subjected a class of aggrieved employees to constructive discharge and discharge because of sex and conduct protected under Section 704(a) of Title VII.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the Respondent to join with it in reaching a just resolution of this matter. If the Respondent declines to discuss settlement or when for any other reason a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. The confidentiality provisions of the statute and Commission Regulations apply to information obtained during conciliation. The Commission representative will contact each party in the near future to begin conciliation.

On behalf of the Commission:

7-22-15
Date


Roosevelt L. Bryant
Area Director



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Intake Information Group: (800) 669-4000
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Website: www.eeoc.gov

Kaitlyn Wieczorek
4735 Hatfield Street
Pittsburgh, PA 15201

v.

Charge No. 533-2013-01349

Scott Medical Health Center, PC
2275 Swallow Hill Road, Building 900
Pittsburgh, PA 15220

DETERMINATION

I issue the following determination as to the merits of this charge. Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and all requirements for coverage have been met.

Charging Party alleged that she was discriminated against because of her sex, female, when she was repeatedly subjected to unwelcome physical and verbal sexual harassment during her employment as a telephone appointment setter, which began on May 8, 2013. After enduring nearly daily sex-based harassment, and witnessing similar conduct aimed at other employees, for a period of months, Charging Party was discharged from her employment.

Respondent denied that Charging Party was subjected to sexual harassment, and denied that Charging Party complained about such harassment. Respondent denied that it was aware of the alleged harassment. Respondent contended that Charging Party was discharged for poor performance on July 16, 2013.

Investigation revealed that Charging Party and other employees were repeatedly subjected to unwelcome, offensive sexual comments by Charging Party's supervisor Robert McClendon, Telemarketing Manager. McClendon is a supervisor for purposes of Title VII, in that he had tangible employment action authority regarding employees in his department, including but not limited to hiring and firing. McClendon constantly commented on Charging Party's body, told her that an office was the place to give him a lap dance, inquired into her sexual preferences and asked her to call him at night after work hours. The verbal harassment occurred on a daily or weekly basis. Charging Party was also subjected to unwelcome, offensive sexual touching by McClendon. McClendon rubbed Charging Party's shoulders and put his hands on her hip and stomach. McClendon's harassment created a work environment that was both subjectively and objectively hostile and intolerable because of sex, female. His harassment culminated in tangible employment actions, i.e., discharge because of sex and conduct protected under Section 704(a) of Title VII, regarding a number of his victims, including the Charging Party. In addition, Respondent did not take action reasonably calculated to prevent and correct the harassing conduct. Charging Party and others objected to the harassing conduct directly to McClendon, but it continued. Upper level management, including human resources and the President/Chief Executive Officer, had notice of McClendon's conduct but did nothing to stop it. Investigation also revealed that although Respondent had a written sexual harassment policy, it was inadequate and was not enforced.

The evidence revealed that Charging Party engaged in protected activity by objecting to McClendon's conduct and asking him to stop. The evidence also reveals that McClendon made the decision to discharge Charging Party, and that the discharge was in retaliation for Charging Party's protest and refusal to acquiesce to the harassment.

Investigation revealed that at least three other, aggrieved female employees who did not file charges of discrimination were also subjected to the above-referenced Title VII violations.

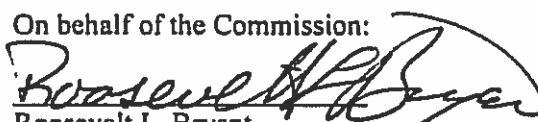
Investigation also revealed that McClendon harassed a male employee because of sex, specifically and repeatedly referring to the male employee as a "faggot," and repeatedly asking the male employee about the employee's sexual experiences and preferences. The investigation revealed that McClendon targeted this male employee because he did not conform to what McClendon believed was acceptable or expected behavior for a male and because of his association with persons of the same sex rather than the opposite sex. The harassment created a work environment that was both subjectively and objectively hostile and intolerable because of sex, male. The male employee complained about McClendon's conduct directly to the President/Chief Executive Officer, who shrugged it off and took no action at all to stop the harassment, which continued. Respondent's failure to engage in prompt and effective action in response to the ongoing harassment resulted in the male employee's constructive discharge when he quit in August 2013.

I find reasonable cause to believe that Respondent has violated Title VII by subjecting Charging Party and a class of other aggrieved employees to harassment because of sex in violation of Title VII. I further find reasonable cause to believe that Respondent subjected Charging Party to discharge because of sex and conduct protected under Section 704(a) of Title VII. I further find reasonable cause to believe that Respondent subjected a class of aggrieved employees to constructive discharge and discharge because of sex and conduct protected under Section 704(a) of Title VII.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the Respondent to join with it in reaching a just resolution of this matter. If the Respondent declines to discuss settlement or when for any other reason a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. The confidentiality provisions of the statute and Commission Regulations apply to information obtained during conciliation. The Commission representative will contact each party in the near future to begin conciliation.

7-22-15
Date

On behalf of the Commission:


Roosevelt L. Bryant
Area Director



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Pittsburgh Area Office**

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TTY (412) 395-5904

FAX (412) 395-5749

Website: www.eeoc.gov

Libby Eber
681 Orchard Avenue, Apt. 1
Bellevue, PA 15202

v.

Charge No. 533-2014-00904

Scott Medical Health Center, PC
2275 Swallow Hill Road, Building 900
Pittsburgh, PA 15220

DETERMINATION

I issue the following determination as to the merits of this charge. Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and all requirements for coverage have been met.

Charging Party alleged that she was discriminated against because of her sex, female, when she was repeatedly subjected to unwelcome physical and verbal sexual harassment during her employment as a telephone appointment setter, beginning in November 2012. After enduring nearly daily sex-based harassment, and witnessing similar conduct aimed at other employees, for a period of months, Charging Party was discharged from her employment in August 2013.

Respondent denied that Charging Party was subjected to sexual harassment, and denied that Charging Party complained about such harassment. Respondent denied that it was aware of the alleged harassment. Respondent did not provide any information about the circumstances of the termination of Charging Party's employment.

Investigation revealed that Charging Party and other employees were repeatedly subjected to unwelcome, offensive sexual comments by Charging Party's supervisor Robert McClendon, Telemarketing Manager. McClendon is a supervisor for purposes of Title VII, in that he had tangible employment action authority regarding employees in his department, including but not limited to hiring and firing. McClendon repeatedly accused Charging Party of having sexual relations with a male co-worker. He repeatedly referred to her "tight little ass," and told her repeatedly that he was in love with her. The verbal harassment occurred on a daily or weekly basis. Charging Party was also subjected to unwelcome, offensive sexual touching by McClendon. McClendon repeatedly rubbed Charging Party's shoulders, neck and back. He also rubbed his penis against her buttocks. McClendon's harassment created a work environment that was both subjectively and objectively hostile and intolerable because of sex, female. His harassment culminated in tangible employment actions, i.e., discharge because of sex and conduct protected under Section 704(a) of Title VII, regarding a number of his victims, including the Charging Party. In addition, Respondent did not take action reasonably calculated to prevent and correct the harassing conduct. Charging Party and others objected to the harassing conduct directly to McClendon, but the conduct continued. Upper level management, including human resources and the President/Chief Executive Officer, had notice of McClendon's conduct but did nothing to stop it. Investigation also revealed that although Respondent had a written sexual harassment policy, it was inadequate and was not enforced.

The evidence revealed that Charging Party engaged in protected activity by objecting to McClendon's conduct and asking him to stop. The evidence also reveals that McClendon made the decision to discharge Charging Party, and that the discharge was in retaliation for Charging Party's protest and refusal to acquiesce to the harassment.

Investigation revealed that at least three other, aggrieved female employees who did not file charges of discrimination were also subjected to the above-referenced Title VII violations.

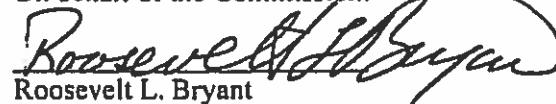
Investigation also revealed that McClendon harassed a male employee because of sex, specifically and repeatedly referring to the male employee as a "faggot," and repeatedly asking the male employee about the employee's sexual experiences and preferences. The investigation revealed that McClendon targeted this male employee because he did not conform to what McClendon believed was acceptable or expected behavior for a male and because of his association with members of the same sex rather than the opposite sex. The harassment created a work environment that was both subjectively and objectively hostile and intolerable because of sex, male. The male employee complained about McClendon's conduct directly to the President/Chief Executive Officer, who shrugged it off and took no action at all to stop the harassment, which continued. Respondent's failure to engage in prompt and effective action in response to the ongoing harassment resulted in the male employee's constructive discharge when he quit in August 2013.

I find reasonable cause to believe that Respondent has violated Title VII by subjecting Charging Party and a class of other aggrieved employees to harassment because of sex in violation of Title VII. I further find reasonable cause to believe that Respondent subjected Charging Party to discharge because of sex and conduct protected under Section 704(a) of Title VII. I further find reasonable cause to believe that Respondent subjected a class of aggrieved employees to constructive discharge and discharge because of sex and conduct protected under Section 704(a) of Title VII.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the Respondent to join with it in reaching a just resolution of this matter. If the Respondent declines to discuss settlement or when for any other reason a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. The confidentiality provisions of the statute and Commission Regulations apply to information obtained during conciliation. The Commission representative will contact each party in the near future to begin conciliation.

7-22-15
Date

On behalf of the Commission:


Roosevelt L. Bryant
Area Director

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONNA MACKIE,
BRITTANY FULLARD,
KAITLYN WIECZOREK,
ALLYSSA GRIFFIE, and
LIBBY EBER,

Civil Action: 2:15-cv-01682-CB

Plaintiffs,

v.

Judge Cathy Bissoon

SCOTT MEDICAL HEALTH CENTER, P.C. JURY TRIAL DEMANDED

Defendants.

DECLARATION

I, Gary Hieronimus, do hereby depose and voluntarily state:

1. I am the Director of Scott Medical Health Center, P.C. (“Scott Medical”).

2. Neither I nor any other representative of Scott Medical was aware that the Equal Employment Opportunity Commission (“EEOC”) was investigating allegations of sexual orientation or any other allegations by its former employee, Dale Baxley, until late July 2015 when the EEOC informed Scott Medical that it found probable cause of violations of Title VII by Scott Medical as to five female former employees of Scott Medical, who had filed Charges of Discrimination with the EEOC, and as to Dale Baxley, who had never filed a Charge of Discrimination and who had never been named in any Charge of Discrimination..

3. I was totally shocked by the information that the EEOC had been investigating allegations by Dale Baxley and was considering making findings as those allegations. I felt that Scott Medical had been blind-sided and treated unfairly by the EEOC, as I had no idea

whatsoever that the EEOC was investigating allegations made by Dale Baxley and was considering making findings on those allegations.

4. Baxley had resigned his employment from Scott Medical almost two years prior to my receipt of Letters of Determination dated July 22, 2015 in which the EEOC indicated that it had reasonable cause to believe that Scott Medical had violated the rights of Baxley. I certainly did not believe, and had no reason to believe, that the EEOC would be investigating allegations of sexual orientation discrimination made by Dale Baxley and making a Determination thereon as a result of the Charges brought by the five former female employees. Scott Medical was not asked by the EEOC for its position as to the Baxley allegations, nor asked to produce any evidence as to those allegations, prior to its issuance of the Letters of Determination.

I have read and had an opportunity to correct this Declaration, and I hereby verify under penalty of perjury that the statements contained in this document are true and correct to the best of my knowledge and belief.

Dated: 5-2-16


GARY HIERONIMUS



U.S. Equal Employment Opportunity Commission

PRESS RELEASE

3-1-16

EEOC Files First Suits Challenging Sexual Orientation Discrimination as Sex Discrimination

In Two Separate Lawsuits, Federal Agency Charges That a Gay Male Employee and a Lesbian Employee Were Subjected to Hostile Work Environments Because of Sex

WASHINGTON - The U.S. Equal Employment Opportunity Commission (EEOC) announced today that it has filed its first two sex discrimination cases based on sexual orientation. The federal agency's Philadelphia District Office filed suit in U.S. District Court for the Western District of Pennsylvania against Scott Medical Health Center, and, in a separate suit, in U.S. District Court for the District of Maryland, Baltimore Division, against Pallet Companies, dba IFCO Systems NA.

In its suit against Scott Medical Health Center, EEOC charged that a gay male employee was subjected to harassment because of his sexual orientation. The agency said that the male employee's manager repeatedly referred to him using various anti-gay epithets and made other highly offensive comments about his sexuality and sex life. When the employee complained to the clinic director, the director responded that the manager was "just doing his job," and refused to take any action to stop the harassment, according to the suit. After enduring weeks of such comments by his manager, the employee quit rather than endure further harassment.

In its suit against IFCO Systems, EEOC charged that a lesbian employee was harassed by her supervisor because of her sexual orientation. Her supervisor made numerous comments to her regarding her sexual orientation and appearance, such as "I want to turn you back into a woman" and "You would look good in a dress," according to the suit. At one point, the supervisor blew a kiss at her and circled his tongue at her in a suggestive manner, EEOC alleged. The employee complained to management and called the employee hotline about the harassment. IFCO fired the female employee just a few days later in retaliation for making the complaints, EEOC charged.

Title VII of the Civil Rights Act of 1964 prohibits discrimination because of sex. As the federal law enforcement agency charged with interpreting and enforcing Title VII, EEOC has concluded that harassment and other discrimination because of sexual orientation is prohibited sex discrimination.

On July 15, 2015, EEOC, in a federal sector decision, determined that sexual orientation discrimination is, by its very nature, discrimination because of sex. See [Baldwin v. Dep't of Transp.](#), Appeal No. 0120133080 (July 15, 2015). In that case, EEOC explained the reasons why Title VII's prohibition of sex discrimination includes discrimination because of sexual orientation: (1) sexual orientation discrimination necessarily involves treating workers less favorably because of their sex because sexual orientation as a concept cannot be understood without reference to sex; (2) sexual orientation discrimination is rooted in non-compliance with sex stereotypes and gender norms, and employment decisions based in such stereotypes and norms have long been found to be prohibited sex discrimination under Title VII; and (3) sexual orientation discrimination punishes workers because of their close personal association with members of a particular sex, such as marital and other personal relationships.

"With the filing of these two suits, EEOC is continuing to solidify its commitment to ensuring that individuals are not discriminated against in workplaces because of their sexual orientation," said EEOC General Counsel David Lopez. "[While some federal courts have begun to recognize this right under Title VII, it is critical that all courts do so.](#)"

Both lawsuits were brought under Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex as well as retaliation. In both the case against Scott Medical Health Center (Case 2:16-cv-00225-CB), and the case against IFCO Systems (Case 1:16-cv-00595-RDB), EEOC filed suit after first attempting to reach pre-litigation settlements through its conciliation process.

Addressing emerging and developing issues, especially coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, is one of six national priorities identified by EEOC's [Strategic Enforcement Plan](#) (SEP). The agency has posted materials on its website relating to [coverage under Title VII for LGBT individuals](#). In addition, in June 2015, the Commission, in coordination with the Office of Personnel Management, Office of Special Counsel, and the Merit Systems Protection Board, developed a [guide for federal agencies](#) on addressing sexual orientation and gender identity discrimination in federal civilian employment.

EEOC enforces the federal laws prohibiting employment discrimination. More information about EEOC is available on its website, www.eeoc.gov.