

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No.: 5:16-cv-00654-BO**

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

BOJANGLES' RESTAURANTS, INC.,

Defendant.

**DEFENDANT'S STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Pursuant to Local Civil Rule 56.1, Defendant Bojangles' Restaurants, Inc. ("Bojangles'") hereby submits this statement of the material facts as to which it contends there is no genuine dispute:

1. Bojangles' operates or franchises about 700 fast food chicken and biscuits restaurants in 12 states and the District of Columbia. (Eubanks Dec. ¶ 3.)
2. Bojangles' corporate office is located in Charlotte, North Carolina. (Eubanks Dec. ¶ 3.)
3. Bojangles' owns and operates a restaurant in Fayetteville, North Carolina, located at 1901 Owen Drive, Fayetteville, NC 28204. (Eubanks Dec. ¶ 4.)
4. Bojangles' employed Wolfe as a crew member in its restaurant location on Owen Drive in Fayetteville, North Carolina. Bojangles' employed Wolfe between May 9, 2012 and February 27, 2013. (Riggins Dep. at 58:19-22; Eubanks Dec. ¶ 16.)
5. Ella Riggins served as the Unit Director at Bojangles' Owen Drive location during Wolfe's employment. (Wolfe Dep. at 46:3-7.)

6. Sharon Irwin served as the Area Director during Wolfe's employment. (Wolfe Dep. at 47:21-22.)

7. Irwin supervised approximately eight Bojangles' restaurant locations in the area, including the Owen Drive location where Wolfe worked. (Irwin Dec. ¶ 2.)

8. Wolfe did not identify as transgender to either Riggins or Irwin when hired by Bojangles'. (Wolfe Dep. at 46:16-23, 58:18-59:24, 128:17-19; Irwin Dep. at 10:16-21.)

9. Wolfe did not tell Irwin that she was a transgender female or ask her to call her a name other than Jonathan during her employment with Bojangles'. (Wolfe Dep. at 128:17-19; Irwin Dep. at 10:16-21.)

10. Riggins and Wolfe rarely worked together. (Riggins Dep. at 42:2-22; Wolfe Dep. at 85:20-22.)

11. During Wolfe's employment, Bojangles' mandatory uniform included unisex pants, belt, shirt, shoes and hat. Bojangles' personal appearance policy required that all crew members' hair must be properly secured and covered by a hat. (Eubanks Dec. ¶ 15 & Ex. A at 11.)

12. Bojangles' personal appearance policy prohibited excessive makeup and jewelry and required fingernails to be neatly trimmed and clean (without artificial nails or nail polish). (Eubanks Dec. ¶ 15 & Ex. A at 11.)

13. Bojangles' personal appearance policy is based in part upon food safety concerns. (Eubanks Dec. ¶ 15 & Ex. A at 11; Eubanks Dep. at 60:16-63:21 & Ex. 3; Riggins Dep. at 79:11-25.)

14. Bojangles' enforces its policies and procedures, including its personal appearance policy, without respect to an individual's gender. (Eubanks Dec. ¶ 15 & Ex. A at 11; Eubanks Dep. at 60:16-63:21 & Ex. 3; Riggins Dep. at 79:3-10.)

15. At all times relevant to this lawsuit, Bojangles' has had a written Equal Employment Opportunity Policy and a Harassment/Discrimination Policy. These policies are contained in Bojangles' Employee Handbook. (Eubanks Dec. ¶ 7.)

16. Wolfe signed an Employee Handbook Acknowledgement on May 4, 2012 acknowledging that she had reviewed Bojangles' Employee Handbook and its policies. (Eubanks Dec. ¶ 7.)

17. Bojangles' Harassment/Discrimination Policy is also provided to employees separately and reviewed with employees as part of Bojangles' new hire procedures. Wolfe signed and acknowledged Bojangles' Harassment/Discrimination Policy on May 4, 2012. (Eubanks Dec. ¶ 8.)

18. Pursuant to its Employee Handbook and Harassment/Discrimination Policy, Bojangles' strictly prohibits any form of discrimination or harassment against its employees based on any prohibited factor, including sex and gender. (Eubanks Dec. ¶ 9.)

19. Bojangles' has a published policy that outlines the procedures employees must follow in reporting claims of suspected harassment. The policy is contained in both the Employee Handbook and the separate Harassment/Discrimination Policy referenced above. Specifically, the policy requires employees who believe they have been harassed to report incidents of harassment, discrimination or retaliation to their Unit Director, Area Director, Regional Vice-President, Director of Human Resources, the Human Resources Hotline or the Employee Awareness Hotline. (Eubanks Dec. ¶ 10 & Exs. B, C.)

20. Bojangles' conducts periodic training for Area Directors on human resources matters, including harassment and effective investigations of harassment complaints. Bojangles' additionally conducts periodic training for all manager trainees on its harassment policies and reporting procedures. (Eubanks Dec. ¶ 12.)

21. Bojangles' also conspicuously has posted in each restaurant, including the Owen Drive Restaurant, a notice regarding its Employee Awareness Hotline, also commonly referred to as the ServiceCheck employee hotline. The ServiceCheck employee hotline is another alternative for employees to report harassment in the workplace. ServiceCheck is a third-party provider that receives complaints or concerns from Bojangles' employees via a toll-free number. The posted hotline notice requests that employees report any illegal, improper or unethical activities that cause harm to the company, any team member/employee or any Bojangles' customer. The notice specifically references harassment as an example of misconduct that must be reported. (Eubanks Dec. ¶ 13.)

22. Wolfe did not make any complaint to anyone in Bojangles' management alleging harassment or discrimination between at least the end of October 2012 and her termination on February 27, 2013. (Wolfe Dep. at 82:19-83:14; 87:2-18; 96:17-98:5.)

23. Wolfe received positive ratings in Bojangles' performance review and a pay raise in October 2012. (Riggins Dep. at 58:4-64:24 & Exs. 19-20)

24. Because Irwin and Riggins perceived Wolfe as a valuable employee, they selected Wolfe to assist in opening a new Bojangles' location on a short-term basis in December 2012. (Irwin Dep. at 51:14-52:22.)

25. Wolfe did not object to returning to the Owen Drive restaurant after finishing her short-term assignment at the new Bojangles' location. (Wolfe Dep. at 68:22-24.)

26. In late February 2013, Wolfe obtained long braided hair extensions that fell to or below her waist. (Singleton Dep. at 48:22-49:9 & Ex. 3; Wolfe Dep. at 155:6-8.)

27. Wolfe arrived the Owen Drive restaurant on February 21, 2013. She was not scheduled to work that day. Several co-workers, including Riggins, observed her new braided hair extensions. (Wolfe Dep. at 72:16-74:23.)

28. While Wolfe was in the Owen Drive restaurant on February 21, 2013, she and Riggins spoke about the need for Wolfe's hair to be restrained or cut. (Wolfe Dep. at 75:10-76:5; Riggins Dep. at 88:8-14.)

29. Wolfe called and spoke with Jeannine Eubanks, Bojangles' Senior Director, Human Resources, on February 21, 2013 regarding her visit to the Owen Drive restaurant on the same day. (Wolfe Dep. at 96:17-98:5.)

30. Wolfe does not specifically remember anything she told Eubanks during their February 21, 2013 call. (Wolfe Dep. at 96:17-98:5.)

31. Eubanks, however, remembers her conversation with Wolfe on February 21, 2013 and maintained notes of the call. (Eubanks Dep. at 103:25-105:8.)

32. During the call, Wolfe conveyed to Eubanks that she was upset about the possibility that she would have to cut or take out her new yarn braids because she had spent \$200 on them. (Eubanks Dep. at 130:17-21.)

33. Irwin followed up with Wolfe on the same day as a result of Wolfe's call to Eubanks. (Irwin Dep. at 38:22-40:11; Wolfe Dep. at 93:3-94:21.)

34. Following the incident at the Owen Drive restaurant and Irwin's call with Wolfe, Irwin transferred Wolfe to another Bojangles' restaurant in Fayetteville, North Carolina located on Raeford Road. (Irwin Dep. at 38:22-40:11; Wolfe Dep. at 93:3-94:21, 112:10-22.)

35. Wolfe conferred with the Unit Director of the Raeford Road restaurant but did not report to work there before her termination. (Wolfe Dep. at 95:3-10; Bowden Decl. ¶ 13.)

36. On February 27, 2013, Wolfe returned to the Owen Drive restaurant. (Wolfe Dep. at 101-02.)

37. While Wolfe was at the Owen Drive restaurant on February 27, 2013, Wolfe engaged in a verbal confrontation with Riggins. (Wolfe Dep. at 101:20-102:17.)

38. During Wolfe's visit to the Owen Drive restaurant on February 27, 2013, Riggins directed Wolfe to leave the restaurant. (Wolfe Dep. at 101:20-102:17.)

39. Wolfe made no purchases during her time in the restaurant on February 27, 2013. (Wolfe Dep. at 102:8-103:25.)

40. On February 27, 2013, Wolfe called Bojangles' customer service hotline to report the incident. Bojangles' retained an audio recording of the call, which Wolfe verified as accurate during deposition. (Wolfe Dep. at 106:23-116:17.)

41. During the nearly eight-minute call, Wolfe referenced her hair twelve times. (Wolfe Dep. at 108:1, 3, 9, 11, 23; 109:9, 12, 13, 17; 112:12, 13, 16.)

42. At no point during her call with Bojangles' customer service hotline did Wolfe allege that the February 27, 2013 incident – or any incident prior – had anything to do with her gender, gender identity or gender expression. Wolfe likewise did not allege that she had previously complained about any form of harassment or discrimination. (Wolfe Dep. at 106:23-116:17.)

43. In response to Wolfe's call to the customer service line on February 27, 2013, Irwin called Wolfe the same day. (Wolfe Dep. at 103:14-104:9.)

44. Irwin made the decision to terminate Wolfe's employment during their February 27, 2013 phone call. (Irwin Dep. at 20:22-23:1.)

45. Irwin made the decision to terminate Wolfe's employment without consulting or relying on anyone else at Bojangles'. (Irwin Dep. at 20:22-21:6; Riggins Dep. at 106:24-107:8.)

This 28th day of July, 2017.

/s/Charles E. Johnson

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Rachael S. Steenbergh
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This 28th day of July, 2017.

/s/ Charles E. Johnson

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