

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

PAULA BAKER,)
)
 Plaintiff)
)
 v.) Civil No. 99-0206-B
)
 DEPARTMENT OF ATTORNEY)
 GENERAL FOR THE STATE OF)
 MAINE,)
)
 Defendant)

RECOMMENDED DECISION ON DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Before the Court is Defendant’s Motion for Summary Judgment (Docket No. 11). Defendant seeks judgment as a matter of law on Plaintiff’s allegation that a co-worker sexually harassed her in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and the Maine Human Rights Act, 5 M.R.S.A. § 4551 *et seq.* For reasons explained below I recommend that the Court GRANT Defendant’s Motion for Summary Judgment.

I. Summary Judgment Standard

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993). “A trialworthy issue exists if the evidence is such that there is a factual controversy pertaining to an issue that may affect the outcome of the litigation under the governing law, and the evidence is ‘sufficiently open-ended to permit a rational factfinder to resolve the issue in favor of either side.’” *De-Jesus-Adorno v.*

Browning Ferris Ind. Of Puerto Rico, 160 F.3d 839, 841-42 (1st Cir. 1998) (quoting *National Amusements v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995)).

II. Facts

Defendant employed Plaintiff as a victim witness advocate in 1989. Six years later, in January 1995, the Attorney General hired David Lauren to be his Special Assistant. (Baker Aff. ¶ 4.) Shortly after Lauren started his employment, he allegedly began to sexually harass the Plaintiff. (Id. ¶¶ 5-9.) Plaintiff claims that on several occasions from 1995 through September or October 1999, Lauren would look directly at her breasts when he spoke to her, and on other occasions would stand or sit so close to her that she had to retreat to maintain personal space. (Id. ¶¶ 5-6.) Plaintiff also claims that Lauren asked her out at a conference at Colby College and later asked her out several other times. (Id. ¶ 7.)

In August 1998, Lauren told Plaintiff that she was “under his wing” and that although the Attorney General did not like the criminal division Lauren could keep her safe. (Id. ¶ 10.) That same month Lauren visited Plaintiff at her office and mentioned something about her looks. Plaintiff responded by saying she had gained weight. Lauren then looked her up and down and told her that she looked good to him. He then asked if she was married to her boyfriend yet to which she responded she was not married but was secure in her relationship. Lauren then told Plaintiff that one of the Attorney General’s pet peeves was people who failed to maintain their state cars and that an attorney had lost his car because he did not complete the necessary reports. Plaintiff believed Lauren told her this information in a threatening manner. (Id. ¶ 13.) Since Plaintiff began working for the Attorney General in 1989, she was assigned a state vehicle for use in state business.

About a month later, Brian MacMaster, Chief of the Investigations Division and the person responsible for state vehicles, concluded that Plaintiff had failed to properly maintain her state vehicle. (MacMaster Aff. ¶ 4.) MacMaster reached this conclusion based upon Plaintiff's failure to obtain scheduled service for the vehicle, Plaintiff's use of the vehicle for personal use such as transportation of pets, Plaintiff's failure to submit required reports, and Plaintiff's failure to obtain service from approved vendors when, on more than one occasion, she needed roadside assistance. (Id.) MacMaster communicated his concerns to the Attorney General through David Lauren. The Attorney General then held a telephone conversation with MacMaster in which MacMaster stated his opinion that the Attorney General should withdraw Plaintiff's car. (Id. ¶ 6.) MacMaster states that, although Lauren was present during the telephone conversation, he only heard Lauren suggest that only a suspension was appropriate. (Id.) The Attorney General rejected that suggestion and notified Paul Gauvreau, Plaintiff's supervisor, of his decision to withdraw Plaintiff's car.

In late September or early October 1998, Gauvreau told Plaintiff that the Attorney General asked him to take her car from her and return it to the central fleet of cars maintained by the state. Gauvreau told her that the reason for the Attorney General's decision was her failure to properly maintain the car and her failure to meet the reporting requirements for those employees who are permanently assigned state vehicles. (Gauvreau dep. at pp. 38-39.) Plaintiff disputed the reason given by Gauvreau, who then met with the Attorney General to discuss the issue. The Attorney General told Gauvreau that he was concerned about the lack of maintenance and service on Plaintiff's car and that the department could not afford to bear the expenses. (Id. at p. 40.)

Gauvreau asked the Attorney General about Lauren's involvement in the situation because MacMaster and Bruce Densmore, Deputy Director of Investigations, had written e-mail messages

to Lauren regarding concerns they had about Plaintiff's maintenance of her state-issued car. *Id.* pp. 40-41. The Attorney General told him that Lauren made him aware of MacMaster and Densmore's concerns and kept him abreast of the situation. The Attorney General also told Gauvreau that Lauren was angry at Plaintiff regarding the car.¹ (Gauvreau dep. attached Ex. No. 5.) He then told Gauvreau that he decided to withdraw Plaintiff's state-assigned vehicle because of Plaintiff's failure to comply with routine maintenance and reporting requirements. Gauvreau left the meeting satisfied with the Attorney General's decision. (*Id.* pp. 41, 54.)

On October 27, 1998, Gauvreau met with Plaintiff and told her that the Attorney General did not change his position. Gauvreau showed Plaintiff the e-mail messages discussing Plaintiff and her state car. Upon seeing Lauren's name on the messages, Plaintiff told Gauvreau that Lauren had sexually harassed her. (Gauvreau Aff. ¶ 5.) Gauvreau then told Plaintiff that he could not tell her what to do, but that she could file a complaint with Amy Homans, the Department's EEO Officer. (*Id.*)

Plaintiff met with Homans on October 28 and 29, 1998, and explained to her Lauren's actions described above. Plaintiff and Homans differ on what was said during the course of their conversation. Plaintiff maintains that Homans was sympathetic towards Lauren implying that Plaintiff was attractive and that intimidated Lauren. During their meeting Homans also commented "Poor David. We all know he just doesn't have any social skills." (Baker Aff. ¶¶ 18-19.) Plaintiff maintains that when she asked if Lauren could have no contact with her, Homans replied that Lauren is the Attorney General's personal assistant and could do whatever the Attorney General wanted him

¹ In his sworn deposition testimony, Gauvreau stated that he does not believe anyone told him that Lauren was angry about the way Plaintiff maintained her car. (Gauvreau dep. at pp. 46-47.)

to do and Plaintiff would have to get use to it. (Baker Aff. ¶ 19.) Plaintiff also claims that Homans did not provide her with any information about her rights or what would happen next in the investigation. (Baker dep. at pp. 283-286.)

After meeting with Homans on October 29th, Plaintiff told Charles Leadbetter, an Assistant Attorney General, of these events. Leadbetter told Plaintiff that she was not the first to complain about Lauren. He mentioned that another female attorney complained that Lauren talked to her breasts and Leadbetter told Lauren to put a stop to it. (Baker Aff. ¶ 20.)

Homans conducted an investigation, interviewed the parties involved, including Lauren, and, on December 1, 1998, met with Plaintiff to discuss her findings. Homans determined that the Attorney General and MacMaster, not Lauren, decided to end her permanent assignment of a state car. (Homans dep. at pp. 44-45.) Homans did tell Plaintiff that Lauren had a problem, that he had been told to look women in their eyes when he spoke with them, and that a letter regarding the incident would be placed in his file for one year. (Baker Aff. ¶ 21.) On December 31, 1998 Plaintiff returned her car to the central fleet. (Id. ¶ 21.)

Plaintiff alleges that after the investigation Defendant took the following retaliatory acts: Plaintiff's ability to lease a state car was subject to unusual and unreasonable restrictions culminating in Defendant's cancellation of the lease without explanation; Plaintiff's work schedule and area of geographic responsibility were changed to her detriment; Plaintiff's pay increased at a slower rate than a less senior employee with the same job; Plaintiff's Transpass card was taken away; Plaintiff lost her office space and equipment; Plaintiff's supervisor and co-workers treated her in a hostile manner; Plaintiff's claim for disability benefits was unreasonably delayed and employees of Defendant State of Maine have refused to assist her on her worker's compensation claim; Plaintiff

received a poor job evaluation; and Plaintiff was treated differently regarding the computation of compensation time.

Prior to filing her Complaint, Plaintiff had never seen posters concerning sexual harassment or the Maine Human Rights Commission. (Baker Aff. ¶ 24.) Although Defendant had never provided Lauren with sexual harassment training, because Defendant never considered Lauren to be a supervisor, he did receive annual materials on sexual harassment and read posters at work on the subject. (Lauren dep. at pp.10-11.) Defendant provided those persons that it considered to be supervisors with sexual harassment training within the year prior to the time Plaintiff lost her state-issued car.

Although the extent of Lauren's authority over Plaintiff is unclear, in that he is not specifically within any chain of command, he is the Attorney General's special assistant and members of the department often present issues or deliver materials to Lauren to present to the Attorney General. (MacMaster Aff. ¶ 5.) Plaintiff claims that over a year earlier, in the winter of 1997, Lauren told her that the Attorney General would demote two Assistant Attorney Generals before the two were demoted. After the incident in her office, Plaintiff asked her supervisor, Fern Larochelle, about the extent of Lauren's authority over her. Larochelle told her that he did not know. (Baker Aff. ¶ 8.) Plaintiff believed that Lauren could control the terms and conditions of her employment. (Id. ¶ 29.)

Analysis

A. Claim Under Title VII

Plaintiff brings this claim pursuant to Title VII. Under Title VII, it is unlawful for an employer "to fail or refuse to hire or to discharge any individual with respect to his compensation,

terms, conditions, or privileges of employment because of such individual's . . . sex." 42 U.S.C. § 2000e-2(a)(1). Here, the Plaintiff alleges *quid pro quo* harassment, hostile work environment harassment and retaliation.²

a. Quid Pro Quo Harassment

When, as here, no direct evidence of discrimination is offered by the plaintiff, the familiar *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) burden-shifting framework applies. *Fennel v. First Step Designs, Ltd.*, 83 F.3d 526, 535 (1st Cir. 1996). Under this framework the plaintiff must first offer evidence to support a prima facie case of discrimination. *Id.* If the plaintiff offers such evidence, the defendant may offer evidence that it had a legitimate, non-discriminatory reason for taking the challenged action. *Id.* If the defendant offers such evidence, the plaintiff must prove that the defendant's offered reason is a pretext or a sham and that the job action was the result of the defendant's discriminatory animus. *Id.*

A plaintiff must meet the following five-part test in order to establish a prima facie case of *quid pro quo* harassment: "(1) the plaintiff employee is a member of a protected group; (2) the sexual advances were unwelcome; (3) the harassment was sexually motivated; (4) the employee's reaction to the supervisor's advances affected a tangible aspect of her employment; and (5) respondeat superior liability has been established." *Ruiz v. Caribbean Restaurants, Inc.*, 54 F.Supp.2d 97, 105 (D. P.R. 1999) (quoting *Chamberlin v. 101 Realty, Inc.*, 915 F.2d 777, 783 (1st Cir.1990)). In its motion, Defendant argues that Plaintiff has not offered facts to support parts four

² Although the "quid pro quo" harassment and "hostile work environment" harassment do not appear in the statutory text "the terms . . . are helpful, perhaps, in making a rough demarcation between cases in which threats are carried out and those where they are not or are absent altogether, but beyond this are of limited utility." *Burlington Indus. v. Ellerth*, 524 U.S. 742, 751-52 (1998).

and five of the test. I will first address whether Plaintiff has asserted facts from which a jury could find respondeat superior liability.

An employer can be vicariously liable under Title VII for *quid pro quo* harassment. *Burlington Indus. v. Ellerth*, 524 U.S. 742, 751-52 (1998). To establish vicarious liability for *quid pro quo* harassment, the plaintiff must offer evidence that the employee had supervisory authority over the plaintiff and that the defendant took “a tangible employment action [that] resulted from a refusal to submit to a supervisor’s sexual demands.” *Ellerth*, 524 U.S. at 753-54. In essence this claim centers around Lauren’s role, or lack thereof, in terminating Plaintiff’s car privileges.³

Defendant maintains that Lauren had no supervisory authority over Plaintiff and merely acted as a conduit conveying information to the Attorney General. Plaintiff alleges that Lauren acted in a supervisory capacity or that she reasonably believed he was acting in a supervisory capacity when he committed the alleged harassment, thereby making Defendant liable under the statute. In *Ellerth*, the Court discussed the applicability of the Restatement (Second) of Torts §219(2)(d) to sexual harassment cases. Under §219(2)(d) vicarious liability can attach when the employee uses apparent authority or when the employee ““was aided in accomplishing the tort by existence of the agency relation.”” *Ellerth*, 524 U.S. at 759 (quoting Restatement § 219(2)(d)). The Court in *Ellerth* went on to reason that:

In the usual case, a supervisor’s harassment involves the misuse of actual power, not the false impression of its existence. Apparent authority analysis therefore is inappropriate in this context. If, in the unusual case, it is alleged there is a false

³ In her Response, Plaintiff lists a number of job actions taken against her that she argues is evidence of *quid pro quo* harassment. Defendant took all of these alleged actions, except the removal of her state vehicle, after Plaintiff complained that Lauren sexually harassed her and the investigation was ongoing. Accordingly, I will address whether the Court needs to examine these allegations in her retaliation claim.

impression that the actor was a supervisor, when he in fact was not, the victim's conclusion must be a reasonable one. (citation and quotation omitted). When a party seeks to impose vicarious liability based on an agent's misuse of delegated authority, the Restatement's aided in the agency relation rule, rather than the apparent authority rule, appears to be the appropriate form of analysis.

Id. at 759-60 (emphasis added).

In the context of a *quid pro quo* claim where the plaintiff claims another employee initiated a tangible employment action by the employer and the employer took such action, "there is assurance the injury could not have been inflicted absent the agency relation" and the apparent authority rule is inapplicable. *Id.* at 761-62. As the Court further explained, "a tangible employment action in most cases inflicts direct economic harm. As a general proposition, only a supervisor, or other person acting with the authority of the company, can cause this sort of injury." *Id.*

The question put before me here is whether Lauren was Plaintiff's supervisor or whether Lauren was acting with the authority of Defendant. Defendant argues that the record conclusively demonstrates that the answer is "no" with regard to these questions. Defendant points out that Lauren did not make or influence any decision regarding the removal of Plaintiff's car. However, I am satisfied that Plaintiff has alleged facts from which a jury could conclude that Lauren had a supervisory role over Plaintiff regarding the removal of her car. Gauvreau, while stating that the Attorney General made the decision, also stated that he was curious about Lauren's role in the incident. According to Gauvreau, the Attorney General said that Lauren kept him abreast of the situation and the concerns MacMaster had about Plaintiff's state-assigned vehicle. (Gauvreau dep. p. 41.) An e-mail sent by MacMaster further reinforces that a question remains as to whether Lauren acted merely as a conduit of information. (*See* Gauvreau dep. Ex. No. 3. "I copied David Lauren on the e-mails regarding Paula Baker and the state car because David had dealt with that issue and

others involving Paula previously.”⁴) While Lauren’s role remains somewhat difficult to pinpoint, in that his position as Special Assistant to the Attorney General places him outside any hierarchal line, I cannot conclude as a matter of law, based on the record before me, that Lauren maintained no supervisory authority over Plaintiff.

Defendant next argues that even if a question of fact exists as to whether Lauren had supervisory authority over Plaintiff, the removal of Plaintiff’s car does not constitute “a tangible employment action.” *Ellerth*, 524 U.S. at 753-54. A “tangible employment action” is “a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.” *Id.* at 761. Most often a tangible employment action “inflicts direct economic harm” on the employee. I am satisfied that a jury could conclude that the removal of Plaintiff’s state car privileges was a tangible employment action. It is undisputed that Plaintiff became very upset when she learned that Defendant terminated her state car privileges because, she claimed, the elimination of that privilege would cause her great economic harm. (Gauvreau dep. at pp.38-39.) Defendant attempts to mitigate the impact by pointing out that, although she was no longer assigned a vehicle, she could lease a state vehicle when she conducted state business. This assertion, however, does not eliminate the fact that a jury could find that Plaintiff suffered direct economic harm from the decision. Accordingly, I

⁴ MacMaster is referring to a conversation he had with Tom Pelkey, who works in Central Fleet Management, regarding Plaintiff. When Defendant assigned Plaintiff her new car in 1997, Pelkey told MacMaster that Plaintiff had not performed regular maintenance on her other cars. MacMaster relayed that information to Lauren. Lauren told MacMaster that he would take care of the situation and subsequently told Gauvreau to speak with Plaintiff about maintaining her vehicle. (Homans dep. at p. 25.) Gauvreau vaguely recalls speaking to Lauren about her vehicle but did not really focus on the issue until September 1998, when he received word from the Attorney General to remove her car. (Gauvreau dep. at p. 36.)

conclude that a jury could determine that Defendant's decision to remove Plaintiff's state car privileges was a tangible employment action.

Defendant next argues that even if Plaintiff has offered sufficient evidence to support a prima facie case of harassment, the evidence in the record conclusively demonstrates that it removed Plaintiff's state vehicle based on a legitimate non-discriminatory reason. Once a defendant offers a legitimate non-discriminatory reason why it took the employment action, the plaintiff must offer evidence ““(1) that the employer's articulated reason for [the adverse employment action against] the plaintiff is a pretext, and (2) that the true reason is discriminatory.” *Mulero-Rodriguez v. Ponte, Inc.*, 98 F.3d 670, 674 (1st Cir. 1996) (quoting *Udo v. Tomes*, 54 F. 3d 9, 13 (1st Cir. 1995)).

Defendant points out that the record demonstrates that *only* the Attorney General made the decision to remove Plaintiff's state-assigned vehicle after he reviewed information provided by MacMaster and Densmore that demonstrated that Plaintiff's vehicle maintenance and reporting was deficient. Plaintiff responds by stating that Lauren had substantial involvement in the decision-making process that led to the removal of her state vehicle and that I should infer, based on Lauren's substantial involvement, that the true reason for the decision was because she rejected Lauren's advances. Pl.'s Resp. to Def.'s Statement of Material Facts ¶ 4. I am satisfied that Plaintiff has not offered sufficient evidence that the reason given for the decision, made ultimately by the Attorney General, was pretextual and that the true purpose was discriminatory.

Plaintiff herself admits that her vehicle maintenance and reporting was deficient. (Paula Baker dep. Vol. I at pp. 182-187; 192-197.) Further, the evidence suggests that the alleged harasser, to the extent he had any input in the decision to remove Plaintiff's vehicle, sought to have the adverse employment action mitigated by trying to convince the Attorney General to only suspend

Plaintiff's use of the state-vehicle. (MacMaster Aff. ¶ 6.) The *Ellerth* case clarifies that it is the tangible employment action initiated by the harassing supervisor which triggers vicarious liability to the employer. In the present case those involved in the actual decision to remove the vehicle *were not even aware* of Plaintiff's harassment allegation when they made the decision.⁵

Simply put, there is not a scintilla of evidence that MacMaster, Gauvreau or the Attorney General acted out of discriminatory animus when they discussed the reasons behind removing Plaintiff's state-assigned vehicle. While there may be a factual dispute surrounding Lauren's supervisory role over Plaintiff, there are simply no facts to support the allegation that he initiated or took the tangible employment action against Plaintiff. A plaintiff must point to specific facts detailed in affidavits and depositions that give rise to an inference of discriminatory animus in order for the dispute to be subjected to the fact-finding process. *Lipsett v. University of Puerto Rico*, 864 F.2d 881, 895 (1st Cir. 1988). Plaintiff's conclusory allegation that "Lauren had substantial involvement in the decision-making process that led to the removal of her vehicle," falls short of specific facts needed to survive summary judgment.

b. Hostile Work Environment

Defendant also moves for summary judgment on Plaintiff's hostile work environment claim. Defendant contends that, even if Plaintiff's allegations against Lauren are true, they are not actionable under Title VII. I agree. In an effort to supply guidance to courts on whether an

⁵Although there is evidence in the record that the Attorney General and Lauren discussed Baker's "informal" complaint regarding allegations of sexual harassment (Lauren deposition at pp. 43 -44), that discussion occurred after the Attorney General made the decision to withdraw Ms. Baker's permanent assignment of a state vehicle. To the extent Plaintiff's Statement of Material Facts ¶22a suggests otherwise, the record references by Plaintiff do not support the asserted facts.

environment is sufficiently hostile to constitute a violation of Title VII, the United States Supreme Court wrote:

[A] sexually objectionable environment must be both objectively and subjectively offensive, one that a reasonable person would find abusive and one that the victim in fact did perceive to be so. We directed courts to determine whether an environment is sufficiently hostile or abusive by looking at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. Most recently we explained that Title VII does not prohibit genuine but innocuous differences in the ways men and women routinely interact with members of the same sex and of the opposite sex. A recurring theme in these opinions is that simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment.

Faragher v. City of Boca Raton, 524 U.S. 775, 787 (1998). The Court continued to warn against Title VII becoming a “general civility code” and stated that the conduct complained of “must be extreme to amount to a change in the terms and conditions of employment” *Id.*; *See also Minor v. Ivy Tech State College*, 174 F.3d 855, 858 (7th Cir. 1999) (finding that actionable hostile work environment harassment must be extreme and that “[i]t is not enough that a supervisor or coworker fails to treat a female employee with sensitivity, tact, and delicacy, uses coarse language, or is a boor.”)

Here Plaintiff alleges that Lauren did the following: asked her out several times, occasionally sat so close to her that he would press against her knees or stood so close to her that he was almost leaning against her, looked at her breasts when he talked to her, and looked her up and down and said to her “You look good to me” in response to her comment that she had gained weight. She also alleges that he warned her about the need for car maintenance in a threatening manner. While Lauren’s alleged behavior over a five year period may have been insensitive and tactless, I am

satisfied that it was by no means extreme, severe, or pervasive enough to constitute an actionable hostile work environment harassment. In *Faragher*, the Court reiterated the four-factor test to be employed for judging such claims: (1) the frequency of the discriminatory conduct; (2) its severity; (3) whether it is physically threatening or humiliating rather than a mere offensive utterance; and (4) whether it unreasonably interferes with an employee's work performance, with no one factor being required. *Faragher*, 524 U.S. 787-88. When each of those factors are used to judge plaintiff's claims, the evidence simply fails to rise to the level of an actionable claim.

In Plaintiff's Memorandum of Law in support of her objection to Defendant's Motion for Summary Judgment she devotes considerable argument to the point that the record establishes disputed material facts on the issue of whether or not the Defendant could successfully assert an affirmative defense to vicarious liability. *Ellerth*, 524 U.S. at 763. It is important to remember, however, that in *Ellerth* the Court accepted without question the District Court's finding that the alleged conduct was severe or pervasive. *Id.* at 754. In the instant case I have not addressed the purported disputed facts surrounding the employer's affirmative defenses of reasonable care to prevent and correct promptly any harassment and the unreasonable failure of the employee to complain because Plaintiff simply has not made out a claim that the harassing conduct was so severe and pervasive as to alter the terms or conditions of employment in violation of Title VII.

c. Retaliation

Plaintiff next alleges that Defendant took several retaliatory acts against her after she alleged that Lauren sexually harassed her. The Court need not reach the merits of Plaintiff's claim because her claim is barred for failing to exhaust her administrative remedies. Plaintiff never filed an EEOC complaint regarding the retaliation claims and never brought those claims to the attention of EEOC

officials. “No claim may be brought in federal court unless the prerequisite of administrative investigation has first been met.” *Johnson v. General Electric*, 840 F.2d 132, 139 (1st Cir. 1988). As in *Johnson*, Plaintiff’s retaliation claim is doomed because she failed to even inform the EEOC of the alleged retaliation.⁶ *Id.*

B. Maine Human Rights Act

Plaintiff also alleges that Defendant violated the MHRA. Plaintiff’s claims under the MHRA are subject to the same legal standards as those used under Title VII. “The Maine courts have relied on the federal case law surrounding Title VII for the purpose of construing and applying the provisions of the Maine Human Rights Act.” *Morrison v. Carleton Woolen Mills, Inc.*, 108 F.3d 429, 436 n.3 (1st Cir. 1997) (citing *Bowen v. Department of Human Servs.*, 606 A.2d 1051, 1053 (Me.1992)). Accordingly, I recommend that the Court GRANT Defendant’s motion on this claim.

Conclusion

For the reasons delineated above, I recommend that the Court GRANT Defendant’s Motion for Summary Judgment.

⁶ I need not decide whether to exercise ancillary jurisdiction over the retaliation claim because of my recommendation to grant Defendant’s motion as to Plaintiff’s sexual harassment claim. *Johnson v. General Electric*, 840 F.2d 132, 139 n. 8 (1st Cir. 1988).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
United States Magistrate Judge

Dated on May 4, 2000.

U.S. District Court
District of Maine (Bangor)

TRLIST STNDRD

CIVIL DOCKET FOR CASE #: 99-CV-206

BAKER v. ATTORNEY GENERAL, ME
Assigned to: JUDGE D. BROCK HORNBY
Demand: \$0,000
Lead Docket: None
Dkt# in other court: None

Filed: 09/08/99
Jury demand: Plaintiff
Nature of Suit: 442
Jurisdiction: Federal Question

Cause: 42:2000 Job Discrimination (Sex)

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