

Leibowitz v New York County Lawyers Assn.

2024 NY Slip Op 32606(U)

July 25, 2024

Supreme Court, Kings County

Docket Number: Index No. 517381/2019

Judge: Ingrid Joseph

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At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 25th day of July, 2024.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
HEIDI LEIBOWITZ,

Index No.: 517381/2019

Plaintiff,

-against-

DECISION AND ORDER

NEW YORK COUNTY LAWYERS
ASSOCIATION,

Defendant.

-----X

The following e-filed papers considered herein:

	<u>NYSCEF Doc. Nos.</u>
Notice of Motion/Affirmation in Support/Memorandum of Law/ Exhibits Annexed.....	47-78
Affirmation in Opposition/Memorandum of Law/Exhibits Annexed....	79-83
Memorandum of Law in Reply.....	87

Defendant New York County Lawyers Association (“Defendant” or “NYCLA”) moves for an order, pursuant to CPLR 3212, granting it summary judgment (Mot. Seq. No. 2). Plaintiff Heidi Leibowitz (“Plaintiff”) opposes the motion, arguing that in her deposition testimony, she has provided examples of the type and severity of NYCLA’s discrimination.

Plaintiff began working at NYCLA in March 2005 and served as the Part 137 Fee Dispute Program Administrator until her termination in September 2016. During her employment, Plaintiff took two pregnancy leaves—the second of which is the subject of this litigation. In her complaint, Plaintiff alleges a pattern of discrimination, such as increasing her workload, receiving nasty text messages and notes, and cutting her position to part-time. Plaintiff claims seven causes of action based on pregnancy/gender discrimination, failure to accommodate and wrongful termination under New York State Human Rights Law (Executive Law § 296) and New York City Human Rights Law (Administrative Code of the City of New York § 8–107, “Administrative Code”).

In its motion for summary judgment, Defendant asserts that Plaintiff's claims are uncorroborated, and her termination was a result of Plaintiff not responding to Defendant's request for a definitive return date. As to her first cause of action for pregnancy discrimination under Executive Law 296, Defendant argues that Plaintiff has not shown by a preponderance of evidence that the circumstances surrounding her termination gave rise to an inference of discrimination. Plaintiff's second cause of action under Executive Law 296 (6) and sixth cause of action under Administrative Code § 8-107 (6) allege aiding and abetting, inciting, compelling and coercing discriminatory conduct. As the lone defendant¹ in this action, NYCLA asserts that as the employer it cannot have aided or abetted its own alleged conduct. Defendant further argues that Plaintiff's third cause of action under Executive Law 296 (7) and fifth cause of action under Administrative Code § 8-107 (1) (e)² for retaliation fail because there is no evidence NYCLA knew of Plaintiff's alleged complaint to ADP, NYCLA's human resources agent. With respect to Plaintiff's fourth cause of action alleging a violation of Administrative Code § 8-107 (1) (a), Defendant contends that it did not create and maintain discriminatory working conditions. Instead, it terminated Plaintiff after it reached out to her at least eight times for an unequivocal return date, which she failed to provide. Defendant's argument as to Plaintiff's second and third causes of action also applies to her fifth and six causes of action alleging violations of Administrative Code §§ 8-107 (1) (e) and 8-107 (6), respectively. Finally, Defendant argues that Plaintiff's seventh cause of action for violation of Administrative Code § 8-107 (13) should be dismissed because there is no evidence, besides Plaintiff's deposition testimony, that NYCLA's employees engaged in unlawful discriminatory conduct or that Defendant was or should have been aware since there is no evidence Plaintiff complained of it.

In opposition, Plaintiff argues that summary judgment should be denied because there are numerous examples of NYCLA's harassment of her as a result of her pregnancy in her deposition transcript and the deposition testimony of Ms. Diana Beaty. Plaintiff claims that Ms. Beaty, a receptionist at NYCLA at the time, testified that she warned Plaintiff to watch her back and that

¹ Sophia Gianocopoulos, Executive Director of NYCLA, and Lois Davis, Director of Pro Bono Programs and Plaintiff's supervisor, were named as defendants in the complaint. The Court issued an order that granted their motion to dismiss the complaint as against them (Mot. Seq. No. 1) (NY St Cts Elec Filing [NYSCEF] Doc No. 25).

² In her complaint, Plaintiff asserts that Administrative Code § 8-107 (1) (e) provides that it is unlawful "For an employer to discharge or otherwise discriminate against any person because such person has opposed any practices forbidden under this chapter" (NYSCEF Doc No. 1, ¶ 79). However, after reviewing that section the Court notes that Plaintiff did not provide a correct citation and instead, Plaintiff quoted from § 8-107 (7).

she felt Plaintiff may have been treated differently because she was pregnant. Ms. Beaty also testified as to comments by other NYCLA employees concerning the way Plaintiff was walking. Ms. Beaty further testified that it was difficult for Plaintiff to get a room to express milk. At her deposition, Plaintiff testified that her assistant's hours were reduced, while her workload increased. Further, Plaintiff claims that she was never informed that there was a 134-case backlog going back to 2008, which she asserts was a pretext for her termination. Plaintiff further alleges that she received "nasty" text messages and notes on her computer. In addition, Plaintiff asserts that she did inform NYCLA that she intended to return to work in September. According to Plaintiff, the act of redefining her position while on pregnancy leave was retaliatory.

In its reply, Defendant contends that Plaintiff has mischaracterized the evidence and relied on her own self-serving and unsupported deposition testimony. As to the alleged eleven instances of unlawful treatment witnessed by Ms. Beaty, ten were unconfirmed by Ms. Beaty at her deposition. As to the eleventh allegation, Ms. Beaty only testified that Plaintiff "was treated a little different" but could not say it was because she was pregnant. Defendant admits to treating Plaintiff differently, but only because Plaintiff did not respond to repeated requests for documentation for her leave. Though Plaintiff claimed that she received positive reviews, Defendant argues that Plaintiff's supervisor advised her in writing that the case backlog was "unacceptable" and NYCLA's executive director testified that Plaintiff did receive a negative performance review. While Plaintiff asserts that Defendant admitted that she informed them she was returning to work, Defendant argues that one of their representatives testified that Plaintiff did not tell them when she was coming back, resulting in her termination. As to Plaintiff's claim that her position was redefined because of her pregnancy, Defendant asserts that after clearing the case backlog, NYCLA determined that Plaintiff's work could be accomplished on a part-time basis. Defendant refutes Plaintiff's claim that her termination during her pregnancy leave provided a strong inference of discrimination by asserting that she was terminated the day after her leave ended. With respect to Plaintiff's claim that Defendant was aware of her complaint to ADP, Defendant cites to the deposition transcript of two of their representatives, only one of whom was aware of a complaint to ADP related to a location to express breast milk.

As a preliminary matter, the opposition failed to address Defendant's contentions as to the dismissal of Plaintiff's second and sixth causes of action, which allege that Defendant aided, abetted, incited, compelled and coerced discriminatory, unlawful and retaliatory conduct.

Accordingly, Plaintiff's second and sixth causes of action are deemed abandoned and are dismissed (*see Cherry v Longo*, 175 AD3d 1481, 1483 [2d Dept 2019]; *Disla v Biggs*, 191 AD3d 501 [1st Dept 2021]; *see also Med. Exp. Ambulance Corp. v Kirkland*, 79 AD3d 886, 888 [2d Dept 2010] [party cannot be held liable for aiding and abetting his own violative conduct]).

The Court will first address Plaintiff's first and fourth causes of action alleging discrimination under Executive Law 296 and Administrative Code § 8-107 (1) (a). To establish a prima facie case of discrimination, Plaintiff must show that (1) she is a member of a protected class; (2) she was qualified to hold the position; (3) she was terminated or suffered another adverse employment action; and (4) the discharge or other adverse employment action occurred under circumstances giving rise to an inference of discrimination (*Johnson v N. Shore Long Is. Jewish Health Sys., Inc.*, 137 AD3d 977, 978 [2d Dept 2016]). On a motion for summary judgment dismissing a cause of action for discrimination under New York State Human Rights Law, Defendant must show that Plaintiff can neither (1) establish every element of intentional discrimination nor (2) raise a material issue of fact as to whether Defendant's proffered legitimate, nondiscriminatory reason for the discharge was pretextual (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]; *Balsamo v Savin Corp.*, 61 AD3d 622, 623 [2d Dept 2009]; *Golston-Green v City of New York*, 184 AD3d 24, 36 [2d Dept 2020]). To prevail on a motion for summary judgment dismissing a cause of action alleging discrimination under New York City Human Rights Law, Defendant must make a "prima facie showing that there is no evidentiary route that could allow a jury to believe that discrimination played a role" in plaintiff's termination (*Cenzon-Decarlo v. Mount Sinai Hosp.*, 101 AD3d 924, 927 [2d Dept 2012]). If Defendant meets their burden by presenting evidence of "legitimate, independent and nondiscriminatory reasons to support their actions," the burden shifts to plaintiff to establish that these reasons were pretextual (*Delrio v City of NY*, 91 AD3d 900, 901 [2d Dept 2012]; *Watson v Emblem Health Servs.*, 158 AD3d 179, 183 [1st Dept 2018]). Accordingly, "the question is not whether the [employer's] decision was correct or wise, but whether the reason for the decision was a pretext for discrimination" (*Bilitch v New York City Health & Hosps. Corp.*, 194 AD3d 999, 1002 [2d Dept 2021]).

In support of its motion, Defendant's evidence demonstrates that Defendant tried to accommodate Plaintiff with her leaves and by giving her multiple opportunities to provide a

definitive return date³ (*Smith v Paris Int'l Corp.*, 267 AD2d 223, 224 [2d Dept 1999] [dismissing complaint where the employer accommodated the needs of pregnant employees and plaintiff's claim that she was fired because of her pregnancy was unsupported by the record]). In addition, Defendant asserted that it required a definitive date not for improper or arbitration reasons, but to meet its clients' needs and to inform Plaintiff's temporary replacement. Thus, the Court finds that Defendant has established a legitimate, nondiscriminatory reason for terminating Plaintiff's employment.⁴

In opposition, Plaintiff failed to raise a triable issue of fact as to whether Defendant's explanation was pretextual. Plaintiff's contention that she twice provided a return date is untenable. On July 27, 2016, Plaintiff communicated that she "intend[ed] to return to work by September 7th" (NYSCEF Doc No. 66). A few days later, on August 2, 2016, Plaintiff provided an even vaguer response by stating that she "anticipate[d] returning to work by September" (NYSCEF Doc No. 69). These fall short of constituting an unequivocal statement. Plaintiff's argument that Defendant's claim of inadequate performance as a reason for Plaintiff's termination should be denied is also unavailing. While Plaintiff denies receiving the memorandum⁵ about the backlog or having a conversation with NYCLA about the same, Plaintiff did not refute the existence of any backlog. In fact, Plaintiff testified that NYCLA's "backlog was not half as bad as other programs who were smaller than us" (NYSCEF Doc No. 81, Plaintiff's tr at 55, lines 18-20).

Most of Plaintiff's allegations are supported solely by her own testimony and refuted by other deposition testimonies (*Sommerville v R.C.I.*, 257 AD2d 884, 885 [3rd Dept 1999] [affirming the granting of defendants' summary judgment motion because "conclusory allegations of plaintiff and his counsel, unsupported by any evidentiary basis, do not suffice"]⁶). The only cognizable

³ Plaintiff admitted to at least six different instances in which Defendant requested that Plaintiff provide a return date (see NYSCEF Doc Nos. 49 [Defendant's Statement of Material Facts] and 83 [Plaintiff's Response to Defendant's Statement of Material Facts] at ¶ 21 (Apr. 19, 2016); ¶ 28 (June 17, 2016); ¶ 33 (July 7, 2016); ¶ 35 (July 14, 2016); ¶ 45 (Aug. 1, 2016), and ¶ 48 (Aug. 3, 2016).

⁴ The Court of Appeals has noted that "it matters not whether the [employer's] stated reason for terminating the plaintiff was a good reason, a bad reason, or a petty one" (*Forrest*, 3 NY3d at 308, n 5 [2004]). Instead, [w]hat matters is that the [employer's] stated reason for terminating plaintiff was nondiscriminatory" (*id.*).

⁵ Though NYCLA's memorandum is addressed to Plaintiff, Defendant failed to submit evidence that it was sent to Plaintiff, either by electronic mail or regular mail.

⁶ For instance, Plaintiff's allegation that she was forced to move and store files in the subbasement was contradicted by Beaty's testimony (NYSCEF Doc No. 80, Beaty tr at 16, lines 20-25; at 17, lines 2-11). In addition, Plaintiff herself testified that "[o]nce or twice I may have had assistance from the maintenance person" (NYSCEF Doc No. 81, Plaintiff's tr at 71, lines 6-14).

support is Ms. Beaty's deposition testimony that she believed Plaintiff was treated differently *after* her pregnancy, not *because of* her pregnancy. Plaintiff failed to provide evidence (e.g., text messages, notes on her computer) in support of her claims. Plaintiff asserts that various discriminatory comments and questions made to or about her. Plaintiff testified that there were witnesses who heard these remarks and that "specifically one person [Diana Lamb, now known as Diana Beaty] did hear a lot of comments,"⁷ yet Ms. Beaty denied hearing firsthand any comments⁸ and Plaintiff did not provide an affidavit of any other alleged witnesses. Therefore, Plaintiff has failed to proffer sufficient facts showing that the reason for her termination was pretextual.

Based on the record, the Court finds that Defendant established a prima facie case warranting summary judgment on the discrimination claims and that Plaintiff has not raised an issue of fact. Thus, Plaintiff's first and fourth causes of action are dismissed.

The Court will next address Plaintiff's third and fifth causes of action for retaliation under Executive Law 296 (7) and Administrative Code § 8-107 (7).⁹ To make out a prima facie showing of retaliation under New York State Human Rights Law, the "plaintiff must show that (1) she has engaged in protected activity, (2) her employer was aware that she participated in such activity, (3) she suffered an adverse employment action based upon her activity, and (4) there is a causal connection between the protected activity and the adverse action" (*Forrest*, 3 NY3d at 313). Engaging in a protected activity includes "opposing or complaining about unlawful discrimination" (*id.*). The first, second and fourth elements of a retaliation claim under New York City Human Rights Law are the same. However, with respect to the third element, Plaintiff must show that her employer "engaged in conduct which was reasonably likely to deter a person from engaging in that protected activity" under city human rights law (*Brightman v Prison Health Serv., Inc.*, 108 AD3d 739, 740 [2d Dept 2013]).

"To establish its prima facie entitlement to judgment as a matter of law in a retaliation case commenced pursuant to either the New York State or New York City Human Rights Law, 'a

⁷ See NYSCEF Doc No. 81, Plaintiff's tr at 46, lines 6-12; at 47, lines 4-9.

⁸ Ms. Beaty responded "No" when asked whether she heard or witnessed Plaintiff being asked whether (a) she planned on having more kids (NYSCEF Doc No. 80, at 16, lines 4-9) and (b) "how many babies do you people have" (*id.*, at 16, lines 10-14). Further, when asked whether she heard or witnessed Lois Davis or Sophia Gianacoplos make comments or statements to Plaintiff about her pregnancy, Ms. Beaty responded, "I have never heard it." (*id.*, at 16, lines 15-19).

⁹ Other courts have ignored a plaintiff's incorrect citation to Administrative Code § 8-107 (1) (e), when it is clear that Plaintiff is actually asserting a cause of action under § 8-107 (7) (*Poolt v Brooks*, 38 Misc 3d 1216[A], 1216A, n 3 [Sup Ct, NY County 2013]; *Artis v Random House, Inc.*, 34 Misc 3d 858, 866 [Sup Ct, NY County 2011]). Thus, this Court will proceed to consider the arguments for, and in opposition to, dismissal of the retaliation claim.

defendant must demonstrate that the plaintiff cannot make out a prima facie claim of retaliation or, having offered legitimate, nonretaliatory reasons for the challenged actions, that there exists no triable issue of fact as to whether the defendant's explanations were pretextual" (*Overbeck v Alpha Animal Health, P.C.*, 124 AD3d 852, 853 [2d Dept 2015], citing *Delrio v City of NY*, 91 AD3d 900, 901 [2d Dept 2012]). Once the defendant meets its burden, the "plaintiff must either counter the defendant's evidence by producing evidence that the reasons put forth by the defendant were merely a pretext, or show that, regardless of any legitimate motivations the defendant may have had, the defendant was motivated at least in part by an impermissible motive" (*Brightman*, 108 at 741).

When asked at her deposition if she was claiming retaliation, Plaintiff responded: "Retaliation, well, in terms of me being pregnant and them not wanting me to be pregnant having to accommodate me postpregnancy or during pregnancy, yes, I believe they terminated me for that specific thing" (NYSCEF Doc No. 81, at 15, lines 24-25; at 16, lines 2-7). In her complaint, Plaintiff alleged that the "harassment at work got so bad that Plaintiff called Defendants' Human Resources Department through their designated agent ADP, and pleaded with them for help to resolve the severe harassment" (NYSCEF Doc No. 1, ¶ 24). Plaintiff asserts that Defendant had knowledge of her complaint to ADP of discriminatory conduct. Defendant, however, argues that Plaintiff's retaliation claims fail since there is no record evidence that NYCLA was aware that she complained to ADP of discrimination.

Here, Plaintiff made a request to Ms. Davis and Ms. Gianacoplos for a place to express milk (NYSCEF Doc No. 81, Plaintiff's tr at 31, lines 12-19). The mere request for a reasonable accommodation does not constitute a protected activity for purposes of making out a retaliation claim (*D'Amico v City of NY*, 159 AD3d 558, 558-559 [1st Dept 2018]).¹⁰ However, after Ms. Davis and Ms. Gianacoplos allegedly failed to accommodate her, Plaintiff contacted ADP (*id.* at 31, lines 21-25; at 32, lines 8-9). Defendant does not dispute that Plaintiff contacted ADP on this issue. Ms. Gianacoplos testified that Human Resources spoke to her because Plaintiff "called them to say that she needs to express milk" (NYSCEF Doc No. 75, Gianacoplos tr at 25, lines 15-20).

¹⁰ Though the New York City Human Rights Law was amended in 2018 and became effective in 2019 to reflect that a request for an accommodation was a protected activity, the Eastern and Southern District Courts have determined that such amendment is not retroactive (*Weekes v Jetblue Airways Corp.*, 2022 US Dist LEXIS 167723, at *37, n 13 [ED NY, Sep. 16, 2022, No. 21CV1965 (MKB)]; *Piligian v Icahn Sch. of Medicine at Mount Sinai*, 490 F Supp 3d 707; 722 [SD NY 2020]). Since Plaintiff was terminated in 2016, it logically follows that the amendment is inapplicable here.

Even assuming Plaintiff's complaint to ADP about a place to express milk constituted a protected activity (*see Horne v NY State Div. of Human Rights*, 2024 NY Slip Op 30630[U], *11 [Sup Ct, NY County 2024]), there is no evidence in the record to establish a causal connection between Plaintiff's complaint to ADP and her termination (*see Sanderson-Burgess v City of NY*, 173 AD3d 1233, 1236 [2d Dept 2019]; *Simeone v County of Suffolk*, 36 AD3d 890, 891 [2d Dept 2007]; *Bhatti v Physicians Affiliate Group of NY, P.C.*, 2021 US Dist LEXIS 169463, at *29 [ED NY, Sep. 7, 2021, No. 18CV03139 (DLI/SJB)] ["Although a retaliation claim under NYCHRL is interpreted broadly, a plaintiff is not absolved from putting forth evidence tending to show a causal connection between the plaintiff's protected activity and alleged adverse employment action."]).

Moreover, Plaintiff alleges that she pleaded with ADP for help to stop the harassment and Defendant denies any knowledge of that.¹¹ Plaintiff's deposition transcript contains substantive references to her contacting ADP only in relation to finding a place to express milk (NYSCEF Doc No. 81, Plaintiff's tr at 31, lines 12-25, at 32, lines 2-13, at 51, lines 15-25; at 52, lines 3-7). To the extent Plaintiff is alleging a complaint to ADP other than the one seeking a place to express milk, the Court finds Plaintiff's contention that it is "uncontroverted that Plaintiff complained to ADP about the discrimination she was facing" wholly unsubstantiated (NYSCEF Doc No. 82 at 10). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat a motion for summary judgment (*Zuckerman v New York*, 49 NY2d 557, 562; *see also Engstrom v Kinney Sys.*, 241 AD2d 420, 422 [1st Dept 1997] [finding plaintiff's allegations "vague, conclusory and bereft of supporting evidence"]).

To the extent Plaintiff claims that Defendant's act of redefining her position was retaliation for taking maternity leave, Defendant has put forth a legitimate, nondiscriminatory reason—a determination that Plaintiff's work could be accomplished part-time after clearing the 134-case backlog. Other than stating that she was not informed of this case backlog, Plaintiff has not sufficiently established that Defendant's reason was pretextual or retaliatory in nature.

In sum, Defendant has met its prima facie burden on the causes of action alleging discrimination and retaliation "by offering legitimate, nondiscriminatory, and nonretaliatory

¹¹ Ms. Gianacoplos testified that her conversation with human resources about Plaintiff related only to a location to express milk and that she was not aware that Plaintiff had reported any harassment (NYSCEF Doc No. 25, Gianacoplos tr at 25, lines 15-25; at 26, lines 2-10, 18-24). Ms. Anthe Maria Bova, NYCLA's General Counsel, testified that she did not receive a complaint about harassment or discrimination associated with Plaintiff's pregnancy (NYSCEF Doc No. 74, Bova tr at 17, lines 18-22).

reasons for the challenged actions and demonstrating that there is no evidentiary route that could allow a jury to believe that discrimination or retaliation played a role in [its] challenged actions” (*Ellison v Chartis Claims, Inc.*, 178 AD3d 665, 668 [2d Dept 2019], *lv dismissed* 35 NY3d 997 [2020]). In her opposition, Plaintiff “failed to raise a triable issue of fact that the proffered explanations were a pretext for discrimination or retaliation or that discrimination or retaliation was one of the motivating factors for the challenged actions” (*id.* at 669; *Ferrante v Am. Lung Assn.*, 90 NY2d 623, 629-630 [1997]; *Bond v NY City Health & Hosps. Corp.*, 2020 NY Slip Op 30617[U], *27 [Sup Ct, NY County 2020] [noting that plaintiff failed to “produce any evidence other than self-serving allegations that [the employee’s] actions were motivated by a discriminatory animus”]).

The Court now turns to Plaintiff’s remaining cause of action under Administrative Code § 8-107 (13), which essentially “imputes [an employee’s] discriminatory conduct to the employer under certain enumerated circumstances” (*Russell v NY Univ.*, ___NY3d___, 2024 NY Slip Op 02226, *8 [2024]). An employer will be liable where the “(1) [t]he employee or agent exercised managerial or supervisory responsibility; or (2) [t]he employer knew of the employee’s or agent’s discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action . . . ; or (3) [t]he employer should have known of the employee’s or agent’s discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct” (Administrative Code of City of NY § 8-107 [13] [b] [1]-[3]).

In its motion, Defendant argues that summary judgment on this claim is warranted because there is no evidence, except Plaintiff’s own deposition testimony, that its employees engaged in unlawful discriminatory conduct. In addition, Defendant argues that there is no evidence that Plaintiff complained of it and as such, Plaintiff cannot establish Defendant was, or should have been, aware of its employees’ discriminatory conduct. In opposition, Plaintiff avers that summary judgment should be denied because to the extent that Defendant argues that there is conflicting testimonies of Plaintiff and Ms. Beaty, credibility issues cannot be determined in the instant motion. In addition, Plaintiff contends that through her deposition testimony, she has provided evidence of discriminatory conduct and Defendant’s awareness and failure to prevent the alleged discriminatory conduct. In reply, Defendant asserts that in her opposition, Plaintiff mischaracterizes the record and relies on her own self-serving deposition testimony.

Here, Defendant met its prima facie burden establishing that it had no knowledge of any discriminatory conduct (*see O'Neil v R.C. Diocese of Brooklyn*, 98 AD3d 485, 486-487 [2d Dept 2012]). In opposition, Plaintiff has not proffered evidence, other than a conclusory statement that she complained of harassment to ADP. Even Ms. Beaty, who testified that she believed Plaintiff was treated unfairly, stated that she did not say anything to Ms. Davis or Ms. Gianacoplos (NYSCEF Doc No. 90, Beaty tr at 21, line 25; at 22, lines 2-3). Ms. Beaty only spoke to the "maintenance man" and her family and friends (*id.* at 22, lines 4-10). This could hardly impute notice or knowledge to Defendant so as to make out a claim under Administrative Code § 8-107 (13). Accordingly, it is hereby

ORDERED, that Defendant's motion (Mot. Seq. No. 2) is granted and Plaintiff's complaint is dismissed.

All other issues not addressed herein are either without merit or moot.

This constitutes the decision and order of the Court.



HON. INGRID JOSEPH, J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**